

**LIBRARY**  
**SUPREME COURT, U. S.**

**TRANSCRIPT OF RECORD**

---

---

**Supreme Court of the United States**

**OCTOBER TERM, 1961** *2*

**No. ~~1~~ 5**

---

**NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC., PETI-  
TIONER,**

**vs.**

**FREDERICK T. GRAY, ATTORNEY GENERAL OF  
VIRGINIA, ET AL.**

---

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA**

---

---

**PETITION FOR CERTIORARI FILED JANUARY 31, 1961  
CERTIORARI GRANTED MARCH 20, 1961**



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 44

NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC., PETI-  
TIONER,

vs.

FREDERICK T. GRAY, ATTORNEY GENERAL OF  
VIRGINIA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA

## INDEX

	Original	Print
Record from the Circuit Court of the City of Rich- mond, Commonwealth of Virginia		
Bill of complaint in case No. B-2869	4	1
Answer	12	11
Transcript of testimony	62	13
Testimony of W. Lester Banks— (recalled)—		
direct	62	13
cross	62	14
Offer in evidence	66	18
Testimony of W. Lester Banks— (recalled)—		
redirect	98	53
Plaintiffs rest	99	54
Testimony of Oliver W. Hill—		
direct	99	55

# INDEX

Original    Print

## Record from the Circuit Court of the City of Richmond, Commonwealth of Virginia—Continued Transcript of testimony—Continued Testimony of James W. Harris—

direct .....	137	95
cross .....	138	97
redirect .....	139	98
<b>Ernest C. Downing—</b>		
direct .....	140	99
cross .....	143	103
<b>Louis Thompson—</b>		
direct .....	144	103
<b>David W. Morris—</b>		
direct .....	147	107
<b>Thomas W. Selden—</b>		
direct .....	150	111
<b>Mrs. Marie E. Patterson—</b>		
direct .....	152	112
<b>Jerry C. Fauntleroy—</b>		
direct .....	155	116
cross .....	157	118
redirect .....	157	118
<b>James E. Manson—</b>		
direct .....	158	119
cross .....	162	123
redirect .....	163	124
recross .....	163	124
<b>Arthur L. Price—</b>		
direct .....	164	125
<b>Harold M. Johnson—</b>		
direct .....	165	127
<b>Barbara S. Marks—</b>		
direct .....	171	133
<b>E. Leslie Hamm—</b>		
direct .....	175	138
<b>Edward D. Strother—</b>		
direct .....	177	140
<b>George L. Nelson—</b>		
direct .....	178	141

Record from the Circuit Court of the City of Richmond, Commonwealth of Virginia—Continued

Transcript of testimony—Continued

Testimony of Audrey T. Newman—

direct 180 143

cross 182 145

Josie F. Pravad—

direct 182 145

cross 184 147

Mrs. Ruth M. Rout—

direct 185 148

Harry Stother—

direct 188 151

Alex M. Davis—

direct 190 153

Eugene Williams—

direct 192 155

Marshal T. Garrett—

direct 196 160

George R. Ferguson—

direct 198 162

William M. Smith—

direct 201 165

J. Russell Arnett—

direct 203 168

Moses, C. Maupin—

direct 205 170

cross 207 172

James W. Harris—

(recalled)—

cross 208 173

W. Lester Banks—

(recalled)—

direct 210 174

Offers in evidence 215 180

Testimony of W. Lester Banks—

(recalled)—

cross 222 188

redirect 224 190

L. Francis Griffin—

direct 225 192

Record from the Circuit Court of the City of Richmond, Commonwealth of Virginia—Continued

Transcript of testimony—Continued

Testimony of S. W. Tucker—

direct

230    196

Stipulation as to defendants' exhibits

240    207

Testimony of Oliver W. Hill—

(recalled)—

direct

243    211

W. Lester Banks—

(recalled)—

direct

244    212

Defendants rest

245    213

Defendants' Exhibits:

247    214

No. D-1—Appendix 10, 11, 12, Letters dated May 26, 1954, June 16, 1954 and June 30, 1955 to NAACP Branch Officers, Lay Members and Members of Legal Staff and Executive Board of Virginia State Conference—NAACP, signed W. Lester Banks, Executive Secretary

247    214

No. D-2—Paper dated May 17, 1954, NAACP Activities (May 17-December 31, 1954)

251    220

No. D-3—Statement of Legal Fees and Expenses paid out in 1956, 1957 and 1958

254    225

No. D-4—Letter from Executive Secretary, NAACP to Mr. James B. Smith dated July 1, 1953

255    227

No. D-5—Article, "The Virginia School Fight—A Clarification", by Spottswood W. Robinson, III

256    228

No. D-6—Article, "Virginia Schools: A Study in Frustration", by Marvin Caplan

258    231

No. D-7—Resolutions adopted by the Forty-Second Annual Convention of the NAACP at Atlanta, Georgia, June 30, 1951

263    238

No. D-8—Directives to the Branches Adopted by Emergency Southwide NAACP Conference

265    241

# INDEX

v

Original Print

Record from the Circuit Court of the City of Richmond, Commonwealth of Virginia—Continued		
Defendants' Exhibits—Continued		
No. D-9—Appendix 7—Letter from Spottswood W. Robinson, III to Rev. H. W. McNair, dated May 20, 1952	268	244
—Appendix 8—Meeting of the Board of Directors, NAACP minutes of October 9, 1950	269	246
No. D-10—Letter from Oliver W. Hill to W. Lester Banks, dated April 6, 1950	270	247
Excerpts of record from the United States District Court for the Eastern District of Virginia, Richmond Division in Harrison v. NAACP, No. 127, October Term, 1958	271	249
Transcript of trial proceedings, September 16, 17, 18 and 19, 1957	272	249
Appearances	272	249
Testimony of W. Lester Banks—		
direct	273	250
Colloquy between court and counsel	277	254
Testimony of W. Lester Banks—		
direct	280	257
cross	281	258
Motion to strike testimony and overruling thereof	282	258
Testimony of W. Lester Banks—		
cross	282	259
Roy Wilkins—		
direct	304	281
Offers in evidence	306	282
Testimony of Roy Wilkins—		
cross	315	292
Oliver W. Hill—		
direct	346	323
cross	351	327
Thurgood Marshall—		
direct	371	346
Offers in evidence	372	347

Excerpts of record from the United States District  
Court for the Eastern District of Virginia, Rich-  
mond Division in *Harrison v. NAACP*, No. 127,  
October Term, 1958—Continued

Transcript of trial proceedings, September 16, 17,  
18 and 19, 1957—Continued

Testimony of Thurgood Marshall—

cross ..... 398 373

Martin A. Martin—

direct ..... 417 392

cross ..... 419 394

redirect ..... 421 396

Roland D. Ealey—

direct ..... 422 397

cross ..... 423 398

S. W. Tucker—

direct ..... 426 401

cross ..... 427 402

Plaintiffs rest ..... 429 404

Testimony of Spotswood W. Robinson, III—

direct ..... 430 404

cross ..... 439 415

Colloquy between court and counsel ..... 441 416

Testimony of Leonard R. Bland—

direct ..... 443 418

cross ..... 445 421

Alma R. Randle—

direct ..... 449 424

cross ..... 451 426

Maude E. Walker—

direct ..... 456 431

cross ..... 457 433

Sarah Elizabeth Hicks—

direct ..... 461 436

cross ..... 462 437

redirect ..... 465 440

Rosa Bell Davis—

direct ..... 466 441

cross ..... 467 443

Robert Drakeford—

direct ..... 470 445

cross ..... 472 447



Excerpts of record from the United States District Court for the Eastern District of Virginia, Richmond Division in *Harrison v. NAACP*, No. 127, October Term, 1958—Continued

Transcript of trial proceedings, September 16, 17, 18 and 19, 1957—Continued

Testimony of Moses C. Maupin—

direct ..... 473 449

Leonard R. Bland—

(recalled)—

cross ..... 476 451

Offer in evidence ..... 477 451

Testimony of Alma R. Randle—

(recalled)—

cross ..... 478 452

Offer in evidence ..... 479 453

Testimony of Sarah Elizabeth Hicks—

(recalled)—

cross ..... 480 454

Offer in evidence ..... 480 454

Testimony of Rosa Bell Davis—

(recalled)—

cross ..... 481 455

Offer in evidence ..... 481 455

Testimony of Maude E. Walker—

(recalled)—

cross ..... 481 455

Offer in evidence ..... 483 457

Testimony of Maude E. Walker—

redirect ..... 483 457

C. Harrison Mann, Jr.—

direct ..... 484 458

cross ..... 491 464

B. B. Rowe—

direct ..... 509 483

cross ..... 513 487

Julian A. Sherman—

direct ..... 514 488

Otis Scott—

(rebuttal)—

direct ..... 518 491

Excerpts of record from the United States District  
Court for the Eastern District of Virginia, Rich-  
mond Division in *Harrison v. NAACP*, No. 127,  
October Term, 1958—Continued

Transcript of trial proceedings, September 16, 17,  
18 and 19, 1957—Continued

Testimony of Viola Neal—

(rebuttal)—

direct ..... 520    493

cross ..... 522    495

redirect ..... 523    496

George P. Morton—

direct ..... 526    499

cross ..... 530    503

Guy R. Fridell, Jr.—

direct ..... 533    506

Clerk's certificate (omitted in printing) ..... 535    507

Proceedings in the Supreme Court of Appeals of  
the Commonwealth of Virginia ..... 536    508

Opinion, T'Anson, J. .... 536    508

Judgment ..... 573    534

Petition for rehearing (omitted in printing) ..... 574    535

Order denying petition for rehearing ..... 575    535

Clerk's certificate (omitted in printing) ..... 576    535

Order extending time to file petition for writ of  
certiorari ..... 577    536

Order allowing certiorari ..... 578    537

Order of substitution ..... 579    537

[fol. 4]

[File endorsement omitted]

1

**IN THE  
CIRCUIT COURT OF THE CITY OF RICHMOND  
COMMONWEALTH OF VIRGINIA**

In Chancery.

No. B-2869

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, a corporation, Complainant,

v.

ALBERTIS S. HARRISON, JR., Attorney General of Virginia,  
Supreme Court Building, Richmond, Virginia, T. GRAY  
HADDON, Commonwealth's Attorney for the City of  
Richmond, Virginia, 3818 Hermitage Road, Richmond,  
Virginia, WILLIAM L. CARLETON, Commonwealth's At-  
torney for the City of Newport News, Virginia, 959  
Shore Drive, Newport News, Virginia, LINWOOD B.  
TABB, Commonwealth's Attorney for the City of Nor-  
folk, Virginia, 1118 North Shore Road, Norfolk, Vir-  
ginia, WILLIAM J. HASSAN, Commonwealth's Attorney  
for the County of Arlington, Virginia, 5906 Ninth Road,  
North Arlington, Virginia, FRANK N. WATKINS, Com-  
monwealth's Attorney for the County of Prince Ed-  
ward, Virginia, Farmville, Virginia, Defendants.

BILL OF COMPLAINT—Filed May 20, 1958

To the Honorable E. W. Hening, Jr., Judge of said Court:

Complainants respectfully shows the following case:

1. This is a suit for a judgment declaratory of the  
construction and interpretation of Chapters 33 and 36  
of the Acts of the General Assembly of Virginia, Extra  
Session 1956, being Sections 54-74, 54-78 and 54-79, as  
amended, and Sections 18-349.31 and 18-349.37, inclusive,

of the Code of Virginia of 1950, as they may affect the complainant, its affiliates, officers, members, contributors, [fol. 5] voluntary workers, attorneys engaged by it or to whom it may contribute monies, or litigants receiving its assistance in cases involving racial discrimination, because of the activities of complainant in the past or the continuance of like activities in the future, in the light of complainant's contentions that enforcement thereof would deny complainant, its Virginia State Conference of Branches, its branches, officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies, or litigants receiving its assistance, their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States.

2. Complainant's basic aims and purposes are to secure the elimination of all racial barriers which deprive Negro citizens of the privileges and burdens of equal citizenship rights in the United States. In its Articles of Incorporation (attached hereto as complainant's Exhibit No. 1 and made a part of this Complaint), its principal objectives are described as follows:

• • • voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability and complete equality before the law.

"To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any kind and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects."

Complainant has registered with the State Corporation Commission and has complied fully with state laws relating to foreign corporations which were in force prior to the

enactments here being contested. By virtue of its activities through the 49 years of its existence in its efforts to secure equal rights and equal opportunities for colored citizens of the United States, complainant has become regarded as a chief instrument through which colored citizens of the United States and of the State of Virginia may act in their effort to remove the burdens and penalties imposed by restrictions based upon race and color.

Prior to the enactment of the laws herein complained of, [fol. 6] the activities of complainant have been recognized and regarded by the public, public officials and the courts in Virginia as a normal American procedure for the redress of grievances.

3. In accord with its charter and national constitution (attached hereto as Complainant's Exhibit No. 2 and made a part of this Complaint), complainant has chartered various branches in Virginia for the purpose of carrying on the work of the organization in Virginia. These branches are independent unincorporated associations subject only to such control by complainant-corporation as is set out in the national constitution and constitution and by-laws for branches (attached hereto as Complainant's Exhibit No. 3 and made a part of this Complaint).

In addition to the various branches, there is a state-wide organization of branches known as the Virginia State Conference of Branches maintained by the branches through which they seek to act in concert and pool their strength on issues of state-wide interest. Its chief activity is to acquaint the people of the State with the facts regarding segregation and discrimination and to inform Negroes as to their legal rights and to encourage the assertion of those rights when they are denied. This program is carried out through public meetings, speeches, press releases, news letters and other media.

4. Complainant, its Virginia State Conference of Branches, its branches and members, have worked jointly and severally in concert to secure the eradication of enforced racial segregation pursuant to governmental authority and the elimination of all other forms of racial discrimination imposed by law. This effort has been pur-



sued in various ways: (1) by apprising the public of the adverse effects of discrimination; (2) by seeking to secure the passage of federal and local legislation barring racial discrimination in various facets of American life and by seeking these results through executive action wherever possible; (3) by encouraging Negro citizens to assert their constitutional rights and seek redress in the courts wherever necessary; (4) by advocating the removal of all racial barriers to the full participation in community life of Negro citizens; (5) by contributing to the payment of fees or expenses incident to the prosecution of litigation involving the constitutionality of racially discriminatory governmental action; (6) by aiding in defraying expenses of such litigation from funds raised by public solicitation.

This has been the manner in which complainant has sought to give aid in the overall struggle in the United [fol. 7] States for a society in which considerations of race and color will have no part and proposes to continue such activities in the future. No questions were ever raised concerning the legality of complainant's activities in Virginia or elsewhere until the Supreme Court decision on May 17, 1954, outlawing segregation in public schools. Since that decision, state officials have been seeking to find ways and means to avoid its implementation, and have concluded that complainant must be destroyed if segregation is to be preserved in this state.

Thus, the General Assembly, at its said special session in 1956 which was devoted almost solely to finding ways and means of preserving segregation in the public schools, enacted Chapters 33 and 36, specifically intended to bar complainant, its Virginia State Conference, its branches or members from assisting others in court tests of the legality of governmental action preserving segregation in the state's public school. By this legislation, Negro citizens are in effect denied access to the courts in Virginia to seek redress against state officials for deprivation of their constitutional rights.

5. Defendant Albertis S. Harrison, Jr., is Attorney General of Virginia and as such is the chief executive officer



of the Department of Law of the Commonwealth of Virginia and is charged with enforcement of all laws of the Commonwealth including the statutes aforesaid.

6. Defendants T. Gray Haddon, William J. Carlton, Linwood B. Tabb, Jr., William J. Hassan and Frank N. Watkins are the Commonwealth's attorneys for the cities of Richmond, Newport News, and Norfolk, and the counties of Arlington and Prince Edward, Virginia, respectively, and are each charged with the enforcement of the laws aforesaid.

7. Chapter 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, being now Sections 18-349.31 to 18-349.37, of the Code of Virginia of 1950, makes it unlawful for any person not having a personal or pecuniary right or liability in the proceedings to promise, give, offer, receive or solicit any money, personal services, "or any other thing of value, or any further assistance, or an inducement to any person to commence or to prosecute further any original proceeding in any court of this State, or before any board or administrative agency which the said State, or in any United States Court located within the said State against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing: \* \* \* " (Sec. 1-a), or for any person [fol. 8] "not related by blood or marriage or who does not occupy a position of trust or a position in *loco parentis* to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose advice has not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing." (Sec. 1-b). "Person" is defined to include "person, firm, partnership, corporation, organization or association," and "direct interest" as "a personal right or a pecuniary right or liability." (Sec. 1-c). Doubts have arisen as to the application of the provisions of this stat-

ute to the activities of complainant, its officers, members, contributors and voluntary workers, and attorneys engaged by or to whom they may contribute monies, and litigants as hereinbefore set forth.

8. Chapter 33 of the Acts of the General Assembly of Virginia, Extra Session 1956, amended Sections 54-74, 54-78 and 54-79, of the Code of Virginia of 1950 and defines the elements and penalties of unprofessional conduct on the part of an attorney and the offenses of "running" and "capping." In its original form, Section 54-74 (6) defined "unprofessional conduct" as including the "improper solicitation of any legal or professional business or employment, either directly or indirectly." Chapter 33 amended this subsection to extend this definition to include "the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this Chapter \* \* \*" which includes Sections 54-78 and 54-79. The former, as amended by Chapter 33, now provides:

"(1) A 'runner' or 'capper' is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated \* \* \*

"(2) An 'Agent' is one who represents another in dealing with a third person or persons."

Section 54-79, as amended by Chapter 33, now reads in part:

"It shall be unlawful for any person, corporation, partnership or association to act as a runner or capper as defined by Sec. 54-78 to solicit any business for an attorney at law or such person, partnership, corporation, organization or association \* \* \* in any public place \* \* \* or upon private property of any character whatsoever."

9. In places wherein defendants have a legal duty to enforce said statutes, and elsewhere in the Commonwealth, the complainant has (a) contributed, and proposes to continue to contribute, upon request, the services of attorneys, expert and scientific data which illuminate the ravages of racism, monies toward counsel fees and the expenses of litigation in cases initiated or pending which raise question for decision concerning the legality of racially discriminatory conduct with respect to the use and availability of public facilities; (b) afforded, and proposes to continue to afford, advice and counsel to persons requesting the same with respect to matters involving their civil rights; and (c) informed, and proposes to continue to inform, citizens through public meetings, speeches and other media, as to their civil rights, and to encourage the assertion of those rights when denied.

10. On November 29, 1956, complainant instituted in the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 2435, against the defendants herein, seeking a declaratory judgment as to, and an injunction restraining the enforcement of, certain laws enacted at the 1956 Extra Session of the General Assembly of Virginia, including Chapters 33 and 36, on the ground that the enforcement of said statutes against complainant, its Virginia State Conference, its branches, officers, members, contributors or voluntary workers, attorneys engaged by it or to whom it might contribute monies, or litigants to whom it might lend assistance, because of its activities in the past or the con-

tinuance of like activities in the future, would deny complainant its Virginia State Conference, its branches, [fol. 10] members, contributors and voluntary workers, attorneys engaged by it or litigants to whom it might lend assistance their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, as is more fully shown by its complaint therein, a copy of which is attached hereto as Exhibit 4. The Court, in an opinion filed January 21, 1958, a copy of which is attached hereto as Exhibit 5, concluded that Chapters 33 and 36 were too vague and ambiguous to enable it to pass upon their constitutionality and by a judgment entered April 30, 1958, a copy of which is attached hereto as Exhibit 6, ordered that the complaint therein be retained for a reasonable time pending the determination of such proceedings in the courts of the Commonwealth of Virginia as complainant might see fit to bring to secure an interpretation of Chapters 33 and 36 as they may affect complainant because of its activities in the past or the continuance of like activities in the future.

11. The activities of complainant, its Virginia State Conference its branches, members, contributors and attorneys engaged by it, have been investigated by two committees created by the General Assembly and in the judgment of these committees the activities of the complainant and its subordinates in urging citizens to challenge in courts the constitutionality of Virginia's segregation laws, and raising and expending monies to defray the costs and expenses of litigation designed to eradicate racial segregation, particularly segregation in the public schools of this Commonwealth, violate the provisions of Chapters 33 and 36 of the Code of 1950 as well as activities of attorneys engaged by it to prosecute or defend cases in which questions concerning constitutionality of racially discriminatory state action were raised. The aforesaid legislative committees have recommended that proper officials take appropriate action under these statutes to enforce the penalties provided therein against complainant.

its Virginia State Conference, its branches, members and attorneys engaged by it.

In the case in the district court as mentioned in paragraph 10, the defendants attempted to establish that complainant's aforesaid activities violated the statutes under a fair interpretation of the scope and meaning of the statutes, that the statutes constitute a valid exercise of the state's police power and that the district court should sustain the statutes as constitutional and hold for defendants on the merits. Moreover, complainant believes and so alleges that said statutes would have been enforced against [fol. 11] complainant but for the fact that an injunction issued on them in the federal court. Therefore, complainant is faced with imminent and immediate threat of irreparable injury to itself, its liberty and property, and to its Virginia State Conference, its branches, members, voluntary workers, contributors and attorneys engaged by it and their liberty and property by virtue of the fact that defendants and other state officials charged with the enforcement of these statutes have manifested an intention to apply the statutes and their penalties to complainant.

12. As demonstrated by the above allegations this creates an actual controversy and an actual antagonistic assertion and denial of rights between complainant and the defendants, they being the ones charged by law with the assertion of the governmental position, with regard to whether or not the activities of the complainant as heretofore set forth violate the provisions of Chapters 33 and 36 aforesaid, or either of them, and with regard to the proper interpretation of said statutes.

Wherefore, complainant prays that this court render a declaratory decree and make a binding adjudication of right that the activities of the complainant, its Virginia State Conference, its branches, members, voluntary workers, contributors and cooperating attorneys—through political activity before governmental bodies; by expending monies to defray the costs and expenses, in whole or in part, of litigation designed to eradicate racial segregation from governmental or public functions, by the solicitation of funds for such purposes, and by assisting litigants in



their efforts seeking to secure equal rights and justice for colored citizens by persuading them to exercise and assert their constitutional rights through redress in the courts—and the actions of litigants in seeking, receiving or accepting the assistance of complainant are legitimate functions in which complainant, its Virginia State Conference, members, voluntary workers, contributors and cooperating attorneys and litigants receiving or accepting the assistance of complainant may participate under rights guaranteed it and them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and do not violate the provisions of said statutes or either of them; or, if these do violate the statutes, that said statutes violate the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and their enforcement against the complainant, its Virginia State Conference, its members, voluntary workers, contributors and cooperating attorneys and litigants seeking, receiving or accepting its assistance be permanently enjoined as being in derogation of its and their constitutionally secured rights; and that this court award complainant its costs in this behalf expended.

National Association for the Advancement of Colored People, a Corporation, Complainant, By  
Oliver W. Hill, Of Counsel for Complainant.

• • • • •



[File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF THE  
COMMONWEALTH OF VIRGINIA

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, a Corporation, Plaintiff,

v.

ALBERTIS S. HARRISON, JR., Attorney General of Virginia,  
et al., Defendants.

ANSWER—Filed June 9, 1958

To the Honorable E. W. Hening, Jr., Judge of said Court:

The answer of Albertis S. Harrison, Jr., T. Gray Haddon, William L. Carleton, Linwood B. Tabb, Jr., William J. Hassan, and Frank N. Watkins to a bill of complaint filed against them in the Circuit Court of the City of Richmond, Virginia, by National Association for the Advancement of Colored People, a corporation.

These defendants for answer thereto, or to so much thereof as they be advised that it is material they should answer, answer and say:

1. They are not advised as to whether the activities of the plaintiff violate the provisions of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra [Vol. 13] Session, 1956 (Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 and 18-349.37, inclusive, of the Code of Virginia). It is the contention of the defendants that the said Chapters 33 and 36 do not violate the equal protection clause or the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. They are not advised as to the allegations contained in paragraphs 2 and 3 of the bill of complaint, and call for strict proof of said allegations.

3. They deny the allegations contained in paragraph 4 of the bill of complaint, and call for strict proof of said allegations.

4. They admit the allegations contained in paragraphs 5 and 6 of the bill of complaint.

5. They are not advised as to the allegations contained in paragraphs 9 and 11 of the bill of complaint, and call for strict proof of said allegations.

6. They admit the allegations contained in paragraph 10 of the bill of complaint.

7. They deny the allegations contained in paragraph 12 of the bill of complaint concerning any denial of rights of the plaintiff, and call for strict proof of said allegations.

And now, having fully answered the plaintiff's bill, these defendants pray to be hence dismissed with their reasonable costs by them in this behalf expended.

Albertis S. Harrison, Jr., T. Gray Haddon, William L. Carleton, Linwood B. Tabb, Jr., William J. Hassan, Frank N. Watkins, Defendants.

C. F. Hicks, Assistant Attorney General of Virginia, Supreme Court Building, Richmond, Virginia; David J. Mays, Henry T. Wickham, 1407 State-Planters Bank Building, Richmond, Virginia, Attorneys for the Defendants.

[fol. 62]

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA

No. 5096

---

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ETC.,

v.

A. S. HARRISON, JR., Attorney General of Virginia, et al.

---

No. 5097

---

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,

v.

A. S. HARRISON, JR., Attorney General of Virginia, et al.

---

**Transcript of Testimony (Excerpts)**

• • • • •  
The Court: That is agreeable with you, Mr. Hill?

Mr. Hill: Yes, sir. We don't see any need for duplication.

---

W. LESTER BANKS, was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Hill.

Q. Will you state your name, address and occupation for the record, please?

A. My name is W. Lester Banks. I live at 1613 Ontario Avenue, Richmond, Virginia. I am employed as Executive

Secretary for the Virginia State Conference of the National Association for the Advancement of Colored People.

Q. You have testified previously in cases in the Federal District Court which you just referred to, have you not?

A. I have.

Q. You were Executive Secretary of the Virginia State Conference of N.A.A.C.P. branches long prior to 1956, were you not?

A. Yes, I was.

Q. Is there any difference in the operation of the Virginia State Conference of N.A.A.C.P. branches and the N.A.A.C.P. in Virginia now than there was September 1, 1956?

A. No, there is no difference. The Virginia State Conference and its member branches operate today just as they did on September 1, 1956.

Q. And is that also true of the N.A.A.C.P., the National Association for the Advancement of Colored People, insofar as the overall organization operations in the State of Virginia are concerned?

A. Yes, it is true of the National Association, for the subsidiary branches, and for the State Conference.

Mr. Hill: That is all.

Cross examination.

By Mr. Mays:

Q. Mr. Banks, did you have anything to do with the making of contacts between the Arlington County plaintiffs and their counsel?

[fol. 63] A. Did I have anything to do with that?

Q. Yes. Did the matter come through you, or did it go directly to counsel?

A. Well, in the Arlington County case, as I understand, the contacts were made directly with counsel.

Q. They did not come through you at all?

A. Not the original contacts.

Q. What about the Prince Edward case?

A. The same thing is true of the Prince Edward case.

Q. The Charlottesville case?

A. The same thing is true of Charlottesville.

Q. Arlington?

A. You just asked me about Arlington.

Q. I beg your pardon. I take it your view has not changed?

A. No.

Q. The Newport News case?

A. The same thing would be true in Newport News.

Q. How about the new case in Warren County?

A. That would be true in Warren County, also.

Q. The Norfolk case?

A. That would be true there, too.

Q. You recall at the hearing to which Mr. Hill adverted, you testified concerning the manner in which those cases are handled, and on page 35 of the testimony that was taken as to September 16, 1957, when you were asked about getting lawyers for these cases, you replied: "In that particular situation, when a complaint comes in, if the complaint comes into a local branch, the local branch in many instances will bring that complaint to me as Executive Secretary. In other instances the complaints come directly from the individual. The first thing that I attempt to do is to ascertain whether or not the complaint falls within the general classification of the things that the Association is interested in, that is, cases involving discrimination."

Now, I take it that that is something set up for the record, but not something that operates in practice?

A. I can't see how you could take it in that manner, sir.

Q. In none of these instances you referred to in the specific cases I mentioned, did it come through you to counsel, isn't that true?

A. I so testified.

Q. Has there been, as far as you know, any compensation paid to counsel in any of those cases as of this time, or [fol. 64] would you know?

A. Yes, there has been.

Q. And to whom and in what amounts and for what case, as far as you can recall.

A. I wouldn't, Mr. Mays, be able to recall the amounts paid by the State Conference to any particular attorney without referring to the records.

Q. Would you mind getting that information and supplying that to us at a later time during the course of the hearing?

A. I would be glad to.

Q. Have you set up any kind of special fund within the Conference of branches to meet these legal expenses?

A. Yes and no. I suspect what you have reference to— you have reference to, at one time we had a special legal fund within the Virginia State Conference which was in actuality a general fund, and then it was set aside and designated as a general fund. Freedom funds are set up for the general operations of the Conference.

Q. When was that first set up?

A. When you say that, what do you refer to?

Q. That special fund.

A. I just testified that I suspect you have reference to a designation of a legal fund which was in reality part of our overall fund. But as far as the Conference is concerned, what we designated as a Defense Fund was set up in 1947.

Q. And you still have that?

A. No, that has now become known as a Freedom Fund.

Q. You still have that?

A. Yes, we do have a Freedom Fund.

Q. Is there set up in that Freedom Fund a reserve to take care of the accumulating counsel fees in the several cases I have referred to?

A. At one time there was special fund, as I just referred to, known as the Legal Fund. That fund has changed over to the General Fund.

Q. Have you in any manner set up a reserve to take care of accumulating legal fees in these cases I have referred to?

A. At the present time we have no reserve to take care of the accumulated legal fees; it is all a part of our Freedom Fund activities.

The Court: You do or do not?

The Witness: I say, at the present time we have no [fol. 65] special reserve set aside to take care of the accumulated fees. It is all a part of the Freedom Fund activities.



By Mr. Mays:

Q. Do you recall sending out a letter over your signature as Executive Secretary for the Fund, a letter under date of May 26, 1954, addressed to N.A.A.C.P. branch offices, lay members, and members of the legal staff and Executive Board of Virginia State Conference, N.A.A.C.P.?

A. I don't know. I would have to see the letters, sir.

Q. I will broaden the questions to ask about three, and show them to you at one time. You may recognize these as copies. If not, I will ask you to produce a copy.

The other was a communication addressed by you to "Dear Branch Officer", dated June 16, 1954, and the third a confidential directive dated June 30, 1955, which is addressed to "Member Branches of the Virginia State Conference, N.A.A.C.P.". For your further information, I may say that the letters to which I refer were developed in testimony before one of the legislative committees, and were published in their report, that is, the Committee on Offenses Against Administration and Justice, the first of those letters appearing on page 45. I might say that if you could identify those we might put them in evidence from the report, otherwise, I would ask you to produce the letters themselves for the introduction.

A. I would like to see them.

Q. Surely.

A. Incidentally, Mr. Mays, those letters were not developed in testimony. Those letters came as a part of some material that we submitted to the committee.

Mr. Mays: Will you read the question, please.

(Question read.)

The Witness: Yes, we recognize those letters.

By Mr. Mays:

Q. As far as you know, they are correct copies of the letters?

A. From a casual observation, they seem to be copies. I couldn't swear to them.

Q. Then we will ask you, if you are not certain these are

Q [fol. 66] copies, we will ask you to produce the letters from your files. Will you do that?

Mr. Hill: I think the witness was as fair as he could be. Judge: He said they appeared to be.

Mr. Mays: If he will admit these are copies, that is all I want to know. If he is not certain, that is another matter. If he feels these are correct copies, I would like to introduce them in evidence.

By Mr. Mays:

Q. Do you feel they are?

A. As far as I can ascertain, they are correct copies, Mr. Mays.

Q. Certainly they are correct in substance?

A. They are correct in substance, as far as I can ascertain.

The Court: How much time do you need to ascertain that they are correct copies?

The Witness: I would certainly need to read them over.

The Court: We will take a five-minute recess to enable you to read them through.

(Recess.)

The Court: Mr. Banks, during the recess have you had an opportunity to examine these letters you were being questioned about?

The Witness: I have, sir.

The Court: Counsel may proceed with his examination.

By Mr. Mays:

Q. And you find that they are correct copies of the letters you sent out?

A. Yes, Mr. Mays, I do find that they are correct copies.

#### OFFER IN EVIDENCE

Mr. Mays: Thank you.

I ask, if Your Honor please, that they be marked in evidence, and I may further identify them as pages 47, 48,

49 and 50 of the appendix of the pamphlet to which I referred, in which they are designated respectively, as appendices 10, 11 and 12.

The Court: How do you suggest that be marked, as defendants' exhibits?

Mr. Mays: It would be our first exhibit. I don't know [fol. 67] whether you want to use letters or numbers for that.

Mr. Hill: Are you submitting them as one exhibit?

Mr. Mays: As one exhibit.

The Court: Will you mark them defendants' exhibit D-1?

(The document was marked Defendants' Exhibit D-1 for identification, and received in evidence.)

By Mr. Mays:

Q. Mr. Banks, what was your first contact with the plaintiffs in the Charlottesville case?

A. As plaintiffs in the Charlottesville case, Mr. Mays, it is hard to say what the first contact was. I have, as Executive Secretary, perhaps known one or more of them for a number of years as individuals.

Q. What was your first contact, then, with the Charlottesville school situation?

A. Well, my first knowledge of the Charlottesville school situation was when a recommendation through the president came to the attention of the Conference that the Charlottesville situation was a situation that needed Conference assistance.

Q. Do you know how that came to the attention of the president?

A. I imagine through the usual procedure, sir.

Q. What do you mean by you imagine it was the usual procedure?

A. I think you alluded to it a moment ago—the usual procedure on matters coming to the official attention of the Conference comes about either where an individual who thinks that he or she have been aggrieved will come directly to a branch officer, or will come directly to the Conference.

official, come directly to me as the Executive Secretary, or that same individual might take his complaint directly to a member of the legal staff or the staff.

Now, if the individual complaint comes to me in the first instance, if there is indication that a legal question is involved, then without a determination of that particular complaint it is immediately referred to the chairman of our legal staff, Mr. Oliver W. Hill. If Mr. Hill is unavailable, then the individual would go to another member of the staff. If Mr. Hill, after consideration of the matter, determines that it is a matter in which the N.A.A.C.P. should interest itself in, then he makes a recommendation to the [fol. 68] president of the State Conference, and the president and Mr. Hill concurring, that action is referred to the State Conference Assembly. So that would be the point where I would officially have knowledge of the situation as far as the Charlottesville situation is concerned.

Q. And you say you imagine that is what happened in the Charlottesville case?

A. I would imagine that is what happened in the Charlottesville situation.

Q. Actually, that was the general gist of your testimony which I read into the record a while ago, but which seems not to have been followed in practice in any case that I mentioned. Do you have any clearer recollection than that of the Charlottesville case, as to how it came to your attention?

A. Well, I am pretty certain that that is the way the Charlottesville case came to my attention, through action that had been concurred in by the president of the Conference and by the chairman of the legal staff. I might add, Mr. Mays, that you only asked me about five or six specific cases, and there are just any number of complaints that come to the N.A.A.C.P.

Q. Did I miss any of the school cases?

A. I don't know whether you did or not, sir.

Q. Do you know of any school case that you handled through the usual channels you have just described?

A. I don't recall any of the school cases coming directly to me.

Q. Now, in the Charlottesville case, you knew nothing about it, I understand, until you ascertained it from the president and the chairman of the legal staff?

A. In the Charlottesville case, I think that is correct.

Q. You had no participation in it at all before you heard from them?

A. Before the chairman of the legal staff and the president recommended that Conference report, that is right, I am pretty positive of that.

Q. Do you know whether it came first through the president or first through the chairman of the legal staff?

A. I don't understand your question, sir.

Q. Who was the first one as far as you yourself know, who handled the Charlottesville situation? Was it the president of the Conference or the chairman of the legal staff?

A. The president of the Conference wouldn't handle a [fol. 69] situation at all. I think—I intended to testify, I thought I testified that if the matter was brought directly to the chairman of the legal staff, then the chairman of the legal staff after studying the matter would make recommendation to the president, and they jointly would make recommendation to the Conference.

Q. I understand the general theory. What I am trying to find out is what happened? How did the Charlottesville case first come to your attention? Did it come from the chairman of the legal staff? Did it come from the president of the Conference, or someone else?

A. Well, the president of the Conference and the chairman of the legal staff would jointly concur in seeing that the Charlottesville situation was a situation that merited the consideration of the N.A.A.C.P., and that is when it would be officially before the Conference.

Q. But aside from when it was officially before the Conference, when did it come to your individual attention first, the Charlottesville school situation?

A. I am trying to say, sir, officially I couldn't say the date or the hour, but it officially came to my attention when the situation in Charlottesville had been discussed by the chairman of the legal staff and the president, and they jointly made recommendation to the Conference.

Q. That it take over the case and pay the bills?

A. That it would support the Charlottesville action.

Q. Right.

Now, that is when it came officially to your attention. But I am talking now about a man named Lester Banks, when did he first hear about the Charlottesville case?

A. Well, Lester Banks officially heard about it when that was brought to my attention, sir.

Q. Well, can we just forget about you being an official for a minute, and think about you as being a man, and with that thought, tell me when you first heard about the school situation in Charlottesville, and how you heard about it?

A. Mr. Mays, I would have to ask you again—and I am not trying to be evasive, I am trying to keep our thinking together—when you say about the school situation, I interpret that as being something different from a Charlottesville case.

Q. All right. Of course, certain things had to be done by the officials of N.A.A.C.P. or the fund or the Conference or the legal staff before there was a case. But at some stage, [fol. 70] I assume, this didn't come from heaven. I assume that at some stage somebody in Charlottesville got in touch with somebody in one of the organizations I mentioned, or that somebody in one of those organizations I mentioned got in touch with somebody in Charlottesville. Now, does that make clear what I am trying to bring out? When did that begin? Who got in touch with you first? Who started it?

A. Well, let me try to answer your question this way. Every situation where there is a public school in the State of Virginia, and certainly where there are discriminations existing in those public school, those things come to the attention of the community, and certainly, I was aware as an individual and as Executive Secretary that there were conditions in Charlottesville that needed to be rectified. And I suspect on more than one occasion I have spoken at public mass meetings and urged the citizens of Charlottesville to look about them and see whether or not there were discriminatory conditions. If you are distinguishing between that situation and the actual filing of the case, then,



oh, a number of years ago the situation in Charlottesville came to my attention.

Q. You suspect you appeared there and spoke to them. Don't you know?

A. Oh, yes, I suspect that I have spoken more than once to the citizens of Charlottesville.

Q. So far as your contact with Charlottesville is concerned, the first thing that happened is, you appeared and spoke to groups of aggrieved parents, is that right?

A. Not necessarily spoke to groups of aggrieved parents. I have spoken on any number of occasions to citizens of Charlottesville, which in all probability included some of the aggrieved parents.

Q. What was the next thing that happened so far as Charlottesville is concerned after you made one more of your speeches leading up to this litigation?

A. Leading up to the litigation.

Q. Yes.

A. Now, what I have said thus far, we have spoken to groups in Charlottesville on any number of occasions, and certainly not only those conditions in Charlottesville have been pointed out, but conditions throughout Virginia have been pointed out. I mean that is a part of the program of the Association.

Q. Yes, I understand that. You appeared on several occasions in Charlottesville and made speeches before anybody importuned you to take any action, isn't that right?

A. No one has importuned me to take any action, sir.

Q. All right. You say "we". Who else included in that pronoun "we" appeared there?

A. When I use the pronoun "we" I speak of the N.A.A.C.P.

Q. Can you name any other individuals other than yourself?

A. Well, I don't know. We had a convention in Charlottesville that included 45 or 50 individuals. I wouldn't attempt to name any other individuals, but I am certain that other persons who are members of the State Conference have spoken from time to time in Charlottesville.

Q. Well, you couldn't name any other individuals.

A. Well, I could name; just run down—I imagine Mr. Hill has spoken in Charlottesville. I imagine Dr. Henderson, who was then president of the Conference, spoke one or more times in Charlottesville.

Q. When you say you imagine, please leave that out. Do you know?

A. I would say yes, that they have spoken.

Q. Was that before 1956, when these cases were started?

A. Yes, I am certain that they spoke before 1956.

Q. Now, when was it, as far as you know, that the next event took place leading up to litigation after these several speeches were made? Did you or somebody from your organization contact some of the parents or children, or did they contact you?

A. I am pretty certain—let me be more specific—the parents of the children did not make any contact with me. As I said a moment ago, my first official knowledge of the actual suit came through the chairman of the legal staff and president as a recommendation. But I suspect that the parents contacted a member of the staff, perhaps the chairman of the staff.

Q. You don't know?

A. I don't know.

Q. So any contacts that were made by the parents or the children in Charlottesville were not made with you? That would come through some official?

A. They were not made through my office, no.

Q. And, therefore, it came through some other officials to you, in the first instance you had no previous contacts except through the speeches with the parents of the children?

[fol. 72] A. As far as the case itself is concerned, yes, that officially came to me in that manner.

Q. Now, when it came to you, was it with the request that the Conference approve this as litigation which it would endorse and aid?

A. Yes. There is a general policy, Mr. Mays, that if matters such as the matter under consideration have been given thought by the chairman of the legal staff and his conclusions have been concurred in by the president of the Conference, then a recommendation is made to the State Conference that necessary assistance be given.

Q. And that was done in that instance?

A. Yes.

Q. Did you or anyone representing the Conference as far as you know have any understanding with any of the parents of the children in Charlottesville as to how the fees and expenses of litigation would be paid?

A. No, there was no understanding as far as I know with the members of the branch, other than the fact that the State Conference would be responsible for the fees and expenses.

Q. Did any of those parents indicate to you that they were prepared to make contributions toward the expenses and costs of litigation?

A. As plaintiffs, I would say no. As members of the Charlottesville community, yes, I am certain that the plaintiffs were among the many, many persons in Charlottesville who made contributions to the Freedom Fund, which is generally used to defray the legal expenses involved.

Q. Was that aimed at the legal expenses merely in that suit, or is it a general fund for the purpose of handling this type of litigation?

A. Their contributions came as contributions to what was then known as the Freedom Fund, which is designed to help defray the legal expenses, help programming, and the overall activities of the Conference generally.

Q. It was not aimed at that particular litigation?

A. That is correct.

Q. Has it come to your attention in any way that any of the plaintiffs in Charlottesville have made any arrangements, tentative or otherwise, to reimburse the Association or Conference or counsel for expenses and legal fees?

A. As far as I know, that hasn't come to my attention.

Q. There is some litigation now pending, rather recent [fol. 73] litigation in Warren County. When did that situation first come to your attention?

A. I think it came to my attention, oh, it must have been mid-summer.

Q. When?

A. In mid-summer.

Q. Of this year?

A. You mean the litigation itself?

Q. I am trying to get the antecedents of the litigation. I am perfectly willing to start with the end and work back chronologically, but I would rather start at the beginning and get a continuous story. You knew there was some problem existing in Warren County. I wonder when that first came to your attention.

A. We will separate that from the actual litigation. Yes, Mr. Mays, there has existed a problem in Warren County as far as Negro education is concerned always, because there has never been a high school there. And we were very positive and aware of the situation in Warren County.

Q. What do you mean by "we" and what do you mean by "positive"?

A. Again, I am speaking of the N.A.A.C.P., and I should use the pronoun "I". I was aware of the situation in Warren County. I was aware of the problems that the Negro high school children were facing. I was aware of the problems that the Negro elementary children had faced over the years, not only in 1958, that has been a problem of long standing.

Q. In any event it culminated in litigation this past summer?

A. Yes.

Q. As the immediate antecedent of that litigation, who got in touch with who, in order to get it initiated? Did it come from your organization? Did it come from the parents, or where did it come from? Do you know?

A. I think it came from the parents, sir.

Q. You don't know?

A. In that particular instance, it is the same as the Charlottesville situation. It came officially to the Conference on recommendation, but in talking to some of the parents, I think that they did contact the chairman of the legal staff in that instance.

Q. Was that done at your suggestion, or did they go to him directly themselves without any suggestion from you?

A. Well, I was certain they went, because they as citizens felt that they had certain constitutional rights, and those rights were being violated, sir.

[fol. 74] Q. Did you go up there and make any speeches in Warren County, too, as you did in Charlottesville?

A. Over the years I have appeared in Warren County.

Q. In the last few years, would you say?

A. In the last few years—I was in Warren County—I was in Warren County, not to make a speech, but I was in Warren County maybe the latter part of June. I don't recall the date, but I was in Warren County this year.

Q. We will come back to that. But what I am trying to get out now, and it must be obvious, is just how the parents who became plaintiffs got in touch with counsel in that case, do you know?

A. I would say, to be exact, I don't know how they got in touch with counsel. I would think that the chairman of the legal staff would have to answer that question.

Q. He will be given his chance, but I was wondering if you knew.

A. No, I couldn't swear just what the procedure was.

Q. In any event, it came to you from Mr. Hill, chairman of the legal staff, with a recommendation that the Conference back up that litigation and take care of the expenses and legal fees, is that right?

A. It came jointly from Mr. Hill and the president of the Conference.

Q. And who was the president at that time?

A. Mr. Phillip W. Wyatt, of Fredericksburg, W-y-a-t-t.

Q. He is president of the whole Conference, of the entire Conference?

A. He is president of the Virginia State Conference, yes.

Q. And you have no further knowledge as to how the representation came about, it simply came to you in your official capacity, and you said yes?

A. It wasn't a matter of my saying yes, it was a matter of the Conference concurring in that.

Q. And the Conference did concur?

A. Yes, sir.

Q. And you passed that concurrence on to Mr. Hill?

A. Yes.

Q. Now, you mentioned being up there in June. Have you been present in any of the meetings of the parents in the Warren County situation?

A. The meeting that I referred to in June, Mr. Mays, was a Freedom Fund dinner, if I recall correctly—I couldn't know whether it was June or July. Actually—I was present as an official of the Conference, and at that [fol. 75] time Mr. Hill was the principal speaker. That, I believe, preceded the litigation, and I have been in Warren County since the institution of the suit.

Q. Were there any speakers other than Mr. Hill on that occasion?

A. Well, yes, I had my Assistant Executive Secretary with me who made remarks and greetings, I believe. As I recall, there were one or two other persons who made remarks, such as the—oh, I think there was a Reverend present who made some remarks, but it was simply a banquet procedure.

Q. As a part of the banquet procedure, did any of the speakers urge or suggest to any of those present that litigation be instituted in connection with the segregation situation in Warren County?

A. I don't recall that any suggestions as to the institution of litigation were made. I think that the individuals were told as to what their constitutional rights were.

Q. And were they urged to give effect to those constitutional rights by whatever means were necessary?

A. I can't recall the exact words of the speech, but I am pretty certain that that was recommended, urged, as anybody would urge the citizens to assert their constitutional rights.

Q. And was it urged upon them that the only effective way to do it was in the federal courts?

A. I don't recall that. I have a copy of the speech. I could get it.

Q. Copy of whose speech?

A. The major speech that was delivered.

Q. Was that delivered by Mr. Hill?

A. He did deliver the major speech.

Q. Will you produce that for us so we may have it tomorrow?

A. I will check and see what I can find.

Q. I understood you to say you could produce it.



A. Let me clarify myself. I have had, let me say, a copy of the speech as it was recorded in the Sentinel. Whether that has been thrown away I don't know.

Q. You say as it was reported. Did you have a speech from which Mr. Hill read, or did you have a stenographic transcript of the speech as it was made?

A. As it was reported. I don't have a copy of his speech.

Q. Reported where?

A. In the Sentinel, which is one of the local papers.

Q. That, I suppose, is available in libraries, is it not, or do you know?

[fol. 76] A. I don't recall whether it is or not.

Q. And you will make a search and let us know?

A. I will try to find it.

Q. And will you make a search and tell us whether you can find it?

A. As I say, I can't tell whether it was the latter part of June or the first of July.

Q. You don't keep a memorandum of your activities?

A. I can tell you when I went there.

Q. It was when you went there that you heard it?

A. That is right.

Q. If you can give us some information as to this report and when you went there and heard it, we will appreciate it.

A. I will try, sir.

Q. If that was the Freedom dinner, when did you go back to Warren County?

A. I think that my next visit to Warren County must have been in August.

Q. Can you fix the date reasonably well as to what part of August?

A. No, I would have to refer to my calendar.

Q. What was the occasion of that trip?

A. Well, the occasion was to—it was just a routine trip as Executive Secretary to oblige.

Q. No one asked you to go?

A. Nobody but the branch, and I acted in the capacity of Executive Secretary, yes.

Q. Who went with you on the trip?

A. Mr. Brooks, I believe, accompanied me on the trip.

Q. Who is that?

A. Mr. Brooks is the National Registration Voter Director of the N.A.A.C.P.

Q. None of the legal staff went with you?

A. No, none of the legal staff.

Q. And who was present when you had whatever conference you did have in Warren County.

A. Oh, a number of citizens were present, sir.

Q. Did you at that time give them any advice or suggestions as to litigation?

A. As I recall, this particular trip occurred after the case had been tried in Warren County—I mean the Warren County case had been tried in District Court.

Q. But you had some discussion of the case with these plaintiffs, did you not?

[fol. 77] A. Some discussion of the case—not necessarily a discussion of the case. We had certainly a discussion of the decision that had been rendered by Judge Paul.

Q. When you went up there in August, wasn't that before a decision by Judge Paul? Didn't that come in September?

A. As I said before, sir, I went to one either in the latter part of June or July, to attend a Freedom dinner. My next visit to Warren was the date that I have mentioned, and that came after the decision of Judge Paul.

Q. Did you arrange for the plaintiffs to meet you on that occasion? Did they know you were coming up in advance?

A. Did the plaintiffs know that I was coming in advance? No, they didn't know that I was coming in advance. The secretary of the branch knew that I was coming.

Q. And he called them together when you came?

A. She called some of the parents together, yes.

Q. And what was your discussion with them on that occasion?

A. Oh, I can't recall my discussion. But I would imagine that the discussion certainly centered around—first of all, I suspect as an individual I commended them.

Q. For having brought suit?

A. No, not for having brought the suit.

Q. For what?

A. Having strengthened democracy, having given evidence of one more thing toward making democracy stronger

in Virginia and the United States. I imagine that is what perhaps came out in the discussion.

Q. What evidence are you speaking of? In giving evidence, how was it given?

A. Well, in my opinion, sir, these individuals were citizens of Warren County, State of Virginia, and the United States. And when I say individuals, I am not only talking of the plaintiffs, but these individuals know that they had certain rights, and they asserted those rights, and they had for the first time been given promise of having their children educated within the political confines of the county. And in so doing, that certainly was in accord with the interpretation of the courts. And that is why I suspect that we congratulated them.

Q. Why can't we all save a lot of time here? Isn't it true that the evidence they had given was a willingness to go into the litigation to accomplish their purpose, and you were congratulating them on having shown that evidence? [fol. 78] That was the only evidence they had shown, wasn't it?

A. No, not necessarily to be litigants. I was there congratulating them because they had exercised their constitutional prerogatives.

Q. Where was that particular meeting held?

A. I don't think that it was a particular meeting. We went with several groups, but it wasn't—we met in several of the homes.

Q. Now, I understand you went up there on one occasion after Judge Paul's decision, which you placed in August. You went there on one occasion. Did you go to several homes on that occasion, or was there one meeting?

A. We visited several homes on that occasion.

Q. How numerous were they?

A. Oh, I don't know. I visited the secretary's home, I visited the president's home, I think I visited the treasurer's home, and maybe one or two others.

Q. The plaintiffs?

A. No, I am talking about branch officials now.

Q. All right.

Where was your meeting with the plaintiffs?

A. Well, I think that at the treasurer's home there were quite a number of the plaintiffs, parents who were present who were incidentally plaintiffs and who were also members of the branch.

Q. Was that true of the homes of the other officials?

A. Well, at the secretary's home, as I recall it, there was at least one plaintiff present who happens to live at this home.

Q. But most of them turned up at the treasurer's home?

A. Yes.

Q. And he had them assembled as far as you know in order to meet with you?

A. Yes, I think so.

Q. And where does the treasurer live in Warren County?

A. He lives in Front Royal.

Q. At what time of day or night was that meeting?

A. Late afternoon or early evening, I think.

Q. Not later than early evening?

A. No, late afternoon or early evening.

Q. Now, at that time, was there any effort being made to get the plaintiffs to give up their litigation? Had you heard of any effort being made to induce them to voluntarily relinquish pressing their suit?

A. Yes, I had heard of such.

[fol. 79] Q. Was there any discussion of that situation with the plaintiffs when you met with them at the treasurer's?

A. Yes, I think that there was some discussion. I don't recall the exact line of it.

Q. Do you know whether you or anyone else, while you were present there, urged them to stand by their guns and not drop the litigation?

A. I don't recall, sir, but I am positive if I said anything to them I urged them to stand on their constitutional rights.

Q. Which, of course, meant stick with the litigation in the Federal Court. It could have meant nothing else, could it?

A. Actually, the litigation was accomplished, an accomplished fact so far as I was concerned, the Court had decreed that they had been deprived of their rights, and the Court had ordered them admitted to the Warren County high schools.

Q. You do understand, however, don't you, that plaintiffs can retire from litigation when they choose, you knew that?

A. Certainly.

Q. And didn't you know that an effort was being made by somebody to get these plaintiffs to quit, just give up?

A. It had been called to my attention—in fact, it was brought to my attention while I was there—

Q. By whom?

A. By some of the members of the branch.

Q. You didn't know that was true before you went there?

A. Officially, no.

Q. Well, did you know in advance? Did you know it as an individual, as a man?

A. As an individual, no, I didn't officially know it.

Q. Well, if we will leave out the official, Executive Secretary Banks, and talk about that man Banks again, when did you first find out that some effort was being made to get these people out of the case in the Federal Court?

A. I believe that it first came to my attention when it was published in the Times Dispatch that some of the plaintiffs had been contacted. I am just guessing there, but I remember reading it in the paper. And I think that perhaps was the first instance that I had heard it.

Q. Now, seeing it in the Times Dispatch, your first information on the subject came very shortly before your trip up to Warren County, didn't it?

A. Yes, it did.

Q. And didn't that inspire your trip to Warren County?

[fol. 80] A. I am positive that it did, sir.

Q. That it did?

A. Yes.

Q. And did you not go there for the express purpose of putting some steel in them so they would stick in the litigation?

A. No, not in those terms, sir. I think as Executive Secretary, we went to Warren County to find out whether or not the newspaper accounts had any—whether there was any truth to them, and to find out how the people generally felt.

Q. Well, you did somewhat more than that, didn't you, after you got there? Didn't you urge them as you say to

exercise their constitutional rights, and wasn't the only way to do it in the Federal Court as they had been doing?

A. No, that wasn't the only way, sir. I did urge not only the parents and plaintiffs but the citizens generally, as we always do, to exercise their constitutional rights. We urged, as we would do elsewhere, that the problems were not insurmountable, that there should be communication between the elements of the community, and that sort of thing.

Q. Well, quite aside from all the general speeches and conversation, didn't you specifically ask at least one or more people up there not to get out of that case?

A. No, I can very truthfully say, Mr. Mays; that I didn't ask anyone not to get out. I think that a question was raised generally, how do you feel about the situation. But as far as asking somebody not to get out, that was the individual's personal prerogatives.

Q. That I well know. But I am merely asking you what you did?

A. No, I can truthfully say that I didn't ask any plaintiff not to withdraw. I might have asked whether or not they were going to, or something of that sort.

Q. Did you tell them that it was their duty to their race to stick in that litigation and carry it through to a conclusion?

A. I don't recall telling them that, but I think that had it come to my mind I would have told them that it was their duty to their race to do so.

Q. You don't deny having said it in any event?

A. I don't deny having said it on more than one occasion, that if an individual is being denied something, he should certainly do it for himself and for America.

Q. We are going back to general occasions. I am not talking [fol. 81] about what you said generally, but what you said up there. You don't deny having said that up there?

A. I don't deny it, but I don't recall.

Q. When did that meeting break up, the one at the treasurer's house?

A. I don't know.

Q. Did it last well into the night?

A. I don't recall just how long.

Q. You were home that night, I take, from Warren?

A. No, I stayed in Warren that evening.



Q. Did you have occasion to go up there again?

A. Yes, I was in Warren County again.

Q. When was that?

A. I think that I was in Warren County on the day—I believe I was in Warren County on the Saturday before the schools were officially to be opened.

Q. That was the next trip after your meeting with the plaintiffs at the home of the treasurer?

A. No, let me correct myself. I was in Warren County on a Saturday, on the Saturday after the case, I believe. That was before this trip.

Q. Well, I hope you are no worse confused than I am. I understood the first trip you took was the time you met with these plaintiffs at the treasurer's home.

A. No, I didn't mean to imply that, sir. The first trip in 1958 that I made to Warren County was during June and July to the Freedom Fund dinner.

Q. There was no other trip between that and the time you met with the plaintiffs at the treasurer's home, is that right?

A. That is what I am trying to correct. I was in Warren County prior to that, and if I recall correctly, it was on a Saturday.

Q. You don't know what month that was?

A. No, I don't recall. But it was immediately, I believe, after the Court decision.

Q. After the Court's injunction?

A. I think so.

Q. That was a temporary injunction, and wasn't that September when that took place, or do you remember?

A. I don't remember, but I think it was.

Q. And that was the only time you were there between the Freedom Fund dinner trip and the trip when you went to see the plaintiffs at the treasurer's home?

A. Yes, sir. I wouldn't want you to refer to it as seeing the plaintiffs at the treasurer's home—I have memorandums [fol. 82] of the communications, including memorandums of the branch, which also included some of the plaintiffs.

Q. I am not trying to pin you down as to who was there, but identifying the occasion. You have described an occasion when you went up and saw various officers of the local branch?

A. That is right, sir.

Q. And you spent an afternoon or evening or both with some plaintiffs at the home of the treasurer. And the next time, as I understand it, you went up was just after the temporary injunction, which was on a Saturday. What happened on that occasion?

A. What I am trying to correct, sir, after the temporary injunction, if it was a temporary injunction, I was trying to include that I was in Warren County, not twice, but three times, and I think that was the Saturday preceding the meeting that we have been discussing at length.

Q. All right. What happened on that Saturday?

A. Well, I think that the parents went to the school board's office in the presence of their attorney, and there was some conversation in the school board office. I was more or less a spectator in that situation.

Q. How did you happen to go up? How did it come to your attention that the meeting was to take place?

A. Well, I knew from—I think that Mr. Hill told me that.

Q. Did he suggest you go up?

A. No, if I remember correctly, we were traveling in the same car.

Q. He told you there was going to be such a meeting, but he did not suggest you go to it?

A. It wasn't a meeting as such. I think Mr. Hill met the plaintiffs at the courthouse.

Q. Well, it was understood, wasn't it, that he was coming to see the plaintiffs at the courthouse?

A. I imagine that the plaintiffs knew that he was coming.

Q. Mr. Hill informed you that he was going up for the purpose, is that correct?

A. Mr. Hill informed me that he was going to Front Royal, and, of course, as I was driving, it was necessary—

Q. Necessary what?

A. I said, I was driving, so I had to go along with him.

Q. Did Mr. Hill ask you to go?

A. No, I don't think it was asking at all, Mr. Mays, I just think it was a matter of being—I think we were in Harrisonburg. I am trying to recall this. I think we were in Harrisonburg at the trial, and we came from Harrison-

[fol. 83] burg; if I recollect correctly, and then went over to Front Royal.

Q. And you went to the Judge's office or came straight over there to meet the plaintiffs?

A. I don't know whether it was from the Judge's office or not.

Q. You were in Harrisonburg, weren't you there on the occasion of the hearing before the Court?

A. Yes, sir.

Q. And when that was concluded then you went with Mr. Hill on over to Front Royal in order to have a discussion with the plaintiffs, isn't that correct?

A. Mr. Hill had business in Front Royal, and since I was driving, of course we went together.

Q. I understand by now that you went together, but I am trying to understand why it was that you went at all to Front Royal. Why did Mr. Banks go to Front Royal at all?

A. Well, I went to Front Royal, one, because I was interested in Front Royal. Front Royal was one of the areas where we were sponsoring litigation, or assisting in the sponsorship of litigation. I was interested in Front Royal because of the branch there.

Q. Weren't you specifically interested in Front Royal because there was to be a meeting of plaintiffs there that day?

A. Not necessarily, sir. It wasn't that day, sir. As I recall, the Court convened on Friday, and we went over that evening, and the plaintiffs went to the courthouse Saturday morning.

Q. Then you and Mr. Hill drove over on Friday evening after the Judge's decision, and met with the plaintiffs at the courthouse the following morning in Front Royal?

A. I think that is the way it was.

Q. Why did you happen to go to Front Royal? Was it a general visit, or did you go with the expectation of such a meeting?

A. Again, sir, I went with Mr. Hill.

Q. Yes, I know that. Did he ask you to go with him? Did he ask you to drive him?

A. No, Mr. Mays, he didn't ask me to drive him. He was riding in my car.

Q. He was a passenger in your car?

A. Yes, he was in my car.

Q. But for some reason you went to Front Royal at that time?

[fol. 84] A. Yes.

Q. And what activated your going? Was it simply just general curiosity about the state of the chapter, or did you expect to meet with the plaintiffs in that litigation?

A. I didn't expect to meet with the plaintiffs. Perhaps Mr. Hill was going to meet with the plaintiffs.

Q. Did you understand there was going to be a meeting of the plaintiffs?

A. I don't remember whether I understood that or not.

Q. What did you understand was going to happen at Front Royal, that day or the next day?

A. I think that it was tacitly understood perhaps that there would be a meeting with the plaintiffs, but as to being told that, I don't recall that. I am trying to be truthful about it, because I don't remember.

Q. I certainly want you to be, but we are having a slow time. There was a tacit understanding. I suppose you mean by that that in some way or another you understood that Mr. Hill was going over to Front Royal in order to confer with the plaintiffs? In some way or another you had that impression, however you got it?

A. That is right.

Q. And isn't it true that you got that impression from Mr. Hill?

A. In all probability, I did, sir.

Q. Was there anybody else in the car with you?

A. I don't recall. I am trying to remember whether or not—I believe that—it seems to me that a Mr. Ray was with us.

Q. Who is that?

A. Mr. Ray is a newspaper reporter—it seems to me that he was with us at that time. I wouldn't swear to it.

Q. When you and Mr. Hill arrived at Front Royal, what happened that evening that had any relation at all to the case?

A. I think that there was a meeting that evening.

Q. Where, and who attended?

A. Oh, I imagine most of the citizens of Front Royal attended.

Q. Most of the citizens?

A. I imagine they did—it might have been a meeting purely of the plaintiffs.

Q. Were you there?

A. Yes, I was there.

[fol. 85] Q. Do you know how numerous the gathering was?

A. Well, as I recall, the little church was pretty well filled.

Q. Can you estimate the number of people there?

A. Oh, I would think maybe 50, 60 or 70, something like that.

Q. Well, you said most of the citizens of Front Royal. You meant colored citizens, I take it?

A. Yes.

Q. Were the plaintiffs among them?

A. Yes, sir, I am sure that they were.

Q. Do you know who called that meeting?

A. No, I don't know who called the meeting.

Q. At what time was it held?

A. It was held in the evening.

Q. Was it very long after your arrival?

A. If I remember correctly, Mr. Mays, the meeting was in progress when we arrived. I think it was.

Q. So you and Mr. Hill went straight to the meeting?

A. I think that we did.

Q. What was going on there when you arrived?

A. I believe when we arrived there was a workshop in progress.

Q. What character of workshop?

A. Well, I think it was a community coordination educational workshop.

Q. Put on by the Conference?

A. No, not put on by the Conference.

Q. Put on by whom?

A. By the local branch.

Q. And what was the subject of discussion in the workshop?

A. Well, I think that—we missed, I think, the greater portion of it—but I think the general tenor of the discussion was community coordination, and that sort of thing.

Q. In connection with the educational situation?

A. In connection with the educational situation, and community living generally.

Q. Now, when you and Mr. Hill arrived on the scene with a court reporter, you immediately participated in the meeting?

A. No, I think the proceedings continued, and then at the proper time there were introductions and we did participate.

Q. Now, did you address that meeting?

A. I think I made remarks at that meeting, sir.

Q. What kind of remarks did you make insofar as the litigation is concerned?

[fol. 86] A. Oh, I don't think I pinpointed my remarks to the litigation.

Q. At that time you did not—it was not at that time that you urged them to go on with the litigation?

A. I don't think that I have ever urged them to go on with the litigation.

Q. You urged them to exercise their constitutional rights?

A. I believe that that came about when, as I said a while ago, that some of the parents—

Q. At the treasurer's house, which we have now identified as the third meeting?

A. That is right.

Q. Did Mr. Hill address this third meeting?

A. The third meeting?

Q. The Front Royal meeting.

A. Mr. Hill spoke at that meeting, yes.

Q. What were his comments on the school case?

A. I don't recall, sir.

Q. You don't remember whether he urged them to buck up and see it through or not?

A. I don't recall.

Q. Did anyone else address a meeting on this subject?

A. I don't think they did. I just don't remember.

Q. Now, you stayed at the meeting until it adjourned?

A. Yes.



Q. And it was in the afternoon or the evening?

A. It was in the evening.

Q. After that did anything further happen in connection with the school case or with the plaintiffs until the following morning, as far as you know?

A. As far as I know, no.

Q. Now, when did you understand that there would be a meeting of plaintiffs the following day? When did you first learn about it?

A. I think I learned that at the meeting that evening.

Q. And were the people at the meeting who were plaintiffs urged to be present at the meeting the next day?

A. I don't recall definitely, but I think they were urged by their counsel to be present.

Q. And do you know who urged them to be there?

A. I imagine counsel.

Q. But you don't know?

A. I imagine Mr. Hill urged them.

Q. Well, don't you know that?

[fol. 57] A. Well, I can't say for sure that he did, but I imagine that he did.

Q. Well, you are pretty sure that he urged all of the parents to be present, all of the plaintiffs to be present at the meeting the next day, there was something vital for them to hear. You remember that, don't you?

A. I don't remember whether he did or whether he didn't.

Q. Well, now, the meeting was held the next morning, wasn't it?

A. It wasn't a meeting as I understand it, sir.

Q. Some people got together, didn't they?

A. If I remember the situation correctly, Mr. Hill met the parents and the children at the courthouse, and they went in to see the superintendent. I wasn't in that particular meeting, and I don't know what transpired.

Q. And that was the only thing, the only contact you had on the following day, that is, a Saturday, with the parents, you saw them go with Mr. Hill?

A. Yes, they went into the superintendent's office, as I recall, and the superintendent conversed with them, and then after a meeting with the superintendent. I think the group went over to, I believe it was, the Methodist Church, and Mr. Hill talked to the plaintiffs there.

Q. Now, did you accompany Mr. Hill and the plaintiffs to the meeting with the superintendent?

A. I went to the courthouse, yes.

Q. Was it indicated by Mr. Hill or the plaintiffs, any of them to you, the purpose of the meeting with the superintendent?

A. Oh, I had a general knowledge of why they were meeting with the superintendent, yes.

Q. And why was that?

A. I think that it was to ascertain whether or not enrollment would be affected.

Q. Now, you did not participate in the discussion, as I understand it, you were outside?

A. That is correct, sir.

Q. And was there any further discussion with Mr. Hill or the plaintiffs in your presence after they came outside, and if so, on what subject?

A. Well, as I said, after they left the courthouse, after they left the superintendent's office, if I recall correctly, the group retired to the Methodist Church.

Q. Was that at your request or Mr. Hill's or whose?

[fol. 88] A. Oh, I had nothing to do with it. It wasn't my meeting. It was Mr. Hill's action with these plaintiffs.

Q. When you came away from that meeting with the superintendent, as I understand, the folks who were there adjourned to the Methodist Church, and you went along?

A. Yes, sir.

Q. And Mr. Hill went along?

A. That is right, sir.

Q. Were you present at the Methodist Church during the entire meeting, or however you want to describe it, gathering of people?

A. Yes, I was, either inside or outside.

Q. Were you inside during the most of the meeting?

A. Oh, I think I was.

Q. You were not outside a great deal?

A. Well, I said I was in and out of there.

Q. You were in enough to know pretty much what was going on?

A. Yes, I knew Mr. Hill was talking to the plaintiffs.

Q. What did he say?

A. I don't recall just exactly what it was. I couldn't for the life of me—I don't know what he said.

Q. Did he discuss the case?

A. I am positive that the case was being discussed, but I don't know what he said.

Q. Do you know whether at that time there were any plaintiffs who had been asked to get out of the litigation?

A. Had been asked to?

Q. Yes, that it had been suggested that any of them get out as of that time?

A. I don't know. I think that there had been some that had withdrawn from the case, as I understand it, but I don't know whether they were asked or not.

Q. Did Mr. Hill make any comment on that in his talk to those people?

A. I don't recall whether he made any specific comment.

Q. Do you remember anything at all that Mr. Hill said at that meeting?

A. To quote Mr. Hill verbatim—

Q. No, what was the burden of it.

A. As I said before, Mr. Mays, I am positive that Mr. Hill was talking to the parents and the children in reference to the school situation.

Q. I am sure of it, but what did he say, in substance?

[fol. 89] A. That is what I don't know. I couldn't recall what he said in substance. I don't know what he said in substance.

Q. Did anybody else speak to them?

A. No, I don't think so.

Q. You realized when you went there with Mr. Hill there was some real purpose in having such a meeting?

A. Yes.

Q. And did you understand what that purpose was?

A. I understood that Mr. Hill was to advise—I assumed, I didn't understand, I assumed that Mr. Hill had conversed with the superintendent of schools, and I assumed that Mr. Hill, since all of the plaintiffs were not in the superintendent's office, I assumed that Mr. Hill did not want to clutter up the courthouse corridor, so he simply used the Methodist Church as a convenient place of gathering to impart what-

ever information had been discussed between the superintendent and himself.

Q. You don't know whether there was any plan of future action there at all, whether anything was said about the next step to be taken?

A. No, I don't.

Q. You don't know of any requests he made of the plaintiffs one way or the other?

A. I don't recall.

Q. Did you have any discussion with the plaintiffs, any of them, about footing the bills, that is, the legal expenses and the court costs in the litigation there?

A. As individual plaintiffs, no.

Q. Well, as a group?

A. No more than as members of the branch, not at this particular meeting, but certainly as members of the N.A.A.C.P. branch, the member of a legal community.

Q. Making general considerations?

A. That is correct.

Q. But you had not had any discussion or any knowledge as to what arrangements might have been made concerning the plaintiffs in this case as to costs and expenses in this particular case?

A. No, as far as I was concerned, there was no discussion, as far as I know there had been no discussion.

Q. Did you have information from Mr. Hill or any of the other lawyers as to whether there were any arrangements, tentative or otherwise, with the plaintiffs?

A. No, we didn't have any information to that extent.

[fol. 90] Q. Now, we have had reference made to three different visits you had up there, and the last of those visits have been described, and the third one was at the home of the treasurer when you met with some of the plaintiffs. Did you have occasion to make further visits to Warren County?

A. No, I think that was my last visit down there.

Q. Did any of the Warren County plaintiffs meet with you elsewhere?

A. Yes. I have had occasion since that time to see 18 of the plaintiffs.

Q. Where was that?

A. That was at our state convention in Hampton.

Q. When?

A. October 10, 11 and 12.

Q. And at that time was the case in Warren County discussed?

A. No, it wasn't discussed. In other words, they were a part of the overall convention program.

Q. You mentioned 18, and I wonder whether or not at that time you had a separate meeting with the plaintiffs of the Warren County case at the convention?

A. No, we didn't. I mentioned 18 only because the number, Mr. Mays—it was necessary for me to know how many plaintiffs were present, because it was my responsibility to arrange housing and food accommodations for them.

Q. I can appreciate that. But there was no meeting of that group of plaintiffs as such?

A. No, they were a part of the general convention proceedings, the 23rd Annual State Convention proceedings.

Q. Did anyone admonish them then to keep the litigation going?

A. No, not as such. I wasn't able to attend all the sessions, but I imagine they were certainly given plenty of accolade for being pioneers.

Q. Were they pioneers? Hadn't there been right many school cases in Virginia before then? They were the last-comers, weren't they?

A. I don't know whether they were or not, sir. I don't think they were.

Q. I don't think we need to go into that. I think the record must be replete with Norfolk and Newport News and many other places.

Did Mr. Hill address them on that occasion?

[fol. 91] A. When you say "them", you are talking about the plaintiffs? No, I am positive that Mr. Hill didn't.

Q. Did he address the convention?

A. Mr. Hill had remarks before the convention.

Q. Did he or anyone urge upon these people to continue to exercise their constitutional rights?

A. Oh, I imagine every speaker at the convention urged upon not only those, but everybody in Virginia to exercise their constitutional rights.



Q. Don't you think your imagination is pretty good? Don't you think it is a fact that they did urge them to continue to exercise their constitutional rights?

A. I don't think they pointed out those 18, that is what I am trying to say. I am positive that every convention speaker urged that everyone exercise his full constitutional rights.

Q. Have you had any other meeting with the plaintiffs there except the four instances you have referred to, the plaintiffs in Warren County?

A. I don't think that we have, sir. And may I say again, it wasn't necessarily a meeting with the plaintiffs themselves; probably in two of those instances the plaintiffs were present.

Q. Do you know of any other meetings in which you yourself were not a participant that took place among the Warren County plaintiffs?

A. Oh, no, I don't know officially of any particular ones.

Q. Unofficially, do you know of any meetings that were held by the Warren County plaintiffs other than those you have described?

A. I know of some meetings that were held earlier in the year, not of the Warren County plaintiffs, no.

Q. I am talking about the Warren County plaintiffs.

A. No, I don't recall.

Q. When they were held early in the year, that was long before the litigation?

A. Yes.

Q. Now, I suppose you are aware that in these various school cases there is a considerable accumulation of court expense and per diem time which the lawyers ultimately will have to be paid for because of the undertakings of the Conference, do you not?

A. I am very aware of the expenses involved, sir.

Q. Are you advised from time to time, at least approximately how these expenses have accumulated?

[fol. 92] A. Yes, I receive statements periodically from the chairman of the legal staff.

Q. How often do those statements come?

A. Oh, they come—I couldn't say how often they come.

Q. Well, you have a practice, don't you?



A. I imagine that the statements—it is no set time for a statement to come in.

Q. Do they come with any frequency?

A. Let me put it like this: I think that it has been the experience of the members of the staff to submit their statements as quickly as they can, and as frequently as they can, time permitting.

Q. Those statements, do they cover legal fees, or just legal expenses?

A. The statements coming from the attorneys cover legal fees and expenses.

Q. How near up to date are they?

A. Oh, I don't think that many of them are at all up to date.

Q. What do you mean by that? Are we talking about two years, two months, two weeks, or what?

A. Well, I think that they were within a 12-month period, I assume that.

Q. In other words, the lawyers who participated in these various school segregation cases have got to have their statements current up to within sometime in the last year?

A. Yes, I should think so.

Q. And some of them were pretty well up to date, and some not?

A. As far as I know, yes.

Q. Have you paid the expense items as they came in?

A. As far as the Conference has been able to pay them.

Q. As long as they had money?

A. As long as we have been able to meet the statements we have tried to pay them.

Q. Which means as long as you had money in the treasury for the purpose?

A. That is correct.

Q. Now, have you paid any of the legal fees as such quite as distinguished from the legal expenses? I understand you have paid some. Have you paid the greater portion of the legal fees?

A. No, I think that when a statement comes in, a statement is made including legal fees and expenses, and a [fol. 95] payment is made on the general statement. I was trying to segregate them into fees and expenses.

Q. Now, there are 13 members of the legal staff, as you understand it?

A. No, we have more than that, sir.

Q. More than 13 on the legal staff as such?

A. Yes.

Q. Since you testified last year before the three Judge Federal Court, you have added lawyers to the legal staff?

A. That is correct.

Q. You may remember at that time you said it was 13, but you named only 12. There is a lawyer from Petersburg who is now a member of the legal staff, but was not then, isn't that true?

A. I don't recall, but there is a lawyer in Petersburg.

Q. Will you give us his name, and that will round it out.

A. Mr. Robert H. Cooley, Jr.

Q. And he was a member of the legal staff in September of last year?

A. That is correct.

Q. You have added to the legal staff since, I understand. What gentlemen have been added to the staff, their names and addresses?

A. Mr. James Overton has been added to the staff, he resides in Portsmouth, Virginia. Mr. Otto Tucker has been added to the staff since he testified last September.

Q. And is he related to the Tucker in Emporia?

A. Yes, he is a brother. He lives in Alexandria. Those two have been added to the staff since we testified last year.

Q. Have any others been added?

A. No, I think those are the only two.

Q. Has anybody been subtracted from the legal staff since the September hearing of last year?

A. No, sir, there haven't.

Q. They still have them all?

A. They still have them all.

Q. Are they all now in active practice?

A. As far as I know, they are.

Q. Is Mr. Brown still on the staff?

A. Mr. Brown, as far as I know, is still a member of the staff.

Q. Is he active at the present time?

A. I don't know whether he is active at the present time or not.

Q. Do you know where he is at the present time?

[fol. 94] A. I imagine he is at home in Washington. I haven't heard from him.

Q. You know nothing to the contrary?

A. I know nothing to the contrary.

Q. Now, you mentioned these various members of the staff, who now seem to be 16 in number, sending in their statements. Is that true of all of them? Do they all send them in from time to time?

A. Maybe I could answer that, sir, by giving you the procedure that is followed. A member of the staff submits a statement of fees and expenses to the chairman of the staff, and the chairman of the staff, after consulting with other members, either approves or disapproves the expense item. It is transmitted by voucher to the office, and in turn with the approval of the president and the chairman of the staff, that particular expense item is ordered paid.

Q. Well, if it receives the approval of the chairman of the legal staff, it is paid on that recommendation in every instance, isn't it?

A. No, it must also receive the approval of the president.

Q. But hasn't the president approved it in every instance?

A. I don't know of an instance that the president has not approved it.

Q. Now, who approves the bill of the chairman of the legal staff himself when he bills for services and expenses?

A. Well, that is approved by the president, and the chairman of the staff. I imagine the vice chairman comes into play in that particular instance.

Q. Do you have on hand now any substantial number of bills unpaid as to amounts?

A. Yes, I do have a substantial number pending.

Q. Well, will your record indicate just what bills have been paid and what bills have not been paid growing out of the school segregation cases as of this time?

A. Yes, my records will indicate that, sir.

Q. Will you produce those for me so that we can see precisely what those items are?

A. I would be glad to.

This question that you are asking now, Mr. Mays, is akin to the question that you asked for information earlier, is it not?

Q. What I would like you to bring are your books of account and the receipted vouchers, receipted statements that you have paid, and those which have been billed to you but which have not been paid.

[fol. 95] A. Affecting the attorneys?

Q. Affecting the attorneys in the school litigation case. Will you do that?

Mr. Hill: May it please the Court, I have gone along with a lot of questions I still don't see any relevancy to, and I would like to ask, what is the relevancy of submitting financial statements of what the Conference has paid the attorneys or what they have not paid? There is no question about the fact that the Conference has paid the money. I am asking what is the relevancy in this case to determine the exact amounts.

Mr. Mays: Your Honor, we have three statutes here involved, having to do with running and capping and maintenance and related subjects, and I can't imagine anything being more relevant than the information I am now seeking. We are trying to find out who hires the lawyers, who approves the lawyers' bills, who pays them, in what cases they are paid, and if this is not relevant, sir, I don't know what can be relevant in this type of litigation.

Mr. Hill: May it please the Court, the question as to whether or not the lawyers are paid and who pays them certainly is relevant. Who employs the lawyers is relevant. But all we are asking now—he has asked this witness to produce certain statements between the lawyers and the Conference, and all I am asking is, what is the relevancy of these individual statements? Not the question, the overall question as to whether or not the Conference is bearing those expenses, that is admitted. We don't need to have any evidence on that. We admit that. My own question is whether or not this witness is bound to produce the statements from any of these individual lawyers.

Mr. Mays: May we respond to that, Your Honor?

The Court: Yes, you may.

Mr. Mays: One of the things developed in the hearing in the Federal Court, the record of which has been put in by Mr. Robinson, had to do with the cost of litigation. What

does it cost to take a case through the higher court, now that the principle has been established in 1954, what does it cost to take it up on appeal, the number of plaintiffs involved, their capacity to pay—all of those things are quite relevant things here. Now, as Your Honor will find in going through the record in the Federal Court, the Conference has undertaken to pay legal fees and expenses in a number of cases, and we need to go through that whole background in order to find out how it actually operates, [Vol. 96] not what the By-laws say, but how it operates, how the lawyers function, how the plaintiffs function, and how the officers of these various units, the N.A.A.C.P., the Fund and the Conference and the staff fund.

Now, with that information before us we can get a picture, and without it we haven't even a frame. It seems to me highly relevant, and I can't understand how that objection can be raised.

The Court: I am going to overrule the objection raised by the counsel for the complainants.

Now, do you have an answer to this to the extent, that he was going to produce it, or did the objection come before that?

Mr. Mays: I think the objection came before.

By Mr. Mays:

Q. I have indicated to you what I would like with respect to the Conference books and accounts, the records of paid bills receipted by the lawyers and the unpaid bills rendered by you in the school litigation cases, and I have asked you to produce them here tomorrow morning.

Will you be able to do that?

A. For what period?

Q. From the time school litigation began. I would say it was about 1954, that starts with the Prince Edward case. You know the names of the others, don't you? Or shall we enumerate?

A. I think I have a general knowledge.

Q. I am pretty sure you do.

Mr. Hill: Before we get too far we would like to take exceptions to the ruling of the Court with respect to this particular evidence.

Mr. Mays: We have no further questions.

The Court: Mr. Banks, on this last series of questions, I understand that you now know what records of receipted bills and bills on hand unpaid that Mr. Mays has requested in the school litigation cases, and I want to make sure that the record is clear. Did you say you were going to produce those or not?

The Witness: He is asking, Your Honor, for records of fees paid to attorneys dating back to 1951. To pull those statements out of the records is not going to be an easy job. [fol. 97] Mr. Mays: To facilitate things, I don't want to put counsel or the witness to any more trouble than it is necessary. We will eliminate the Prince Edward case entirely from the picture, that is, before 1956, and disregard any entries in the Prince Edward ledger sheet prior to that time.

By Mr. Mays:

Q. Wouldn't that simplify things considerably for you, the other cases came up later?

A. Yes, that would simplify it.

Q. Will you do that?

A. It would be simpler, I mean it would further simplify it if we were able to produce the statements, as far as we have them, the vouchers and counsel checks covering that particular period; if that would satisfy your inquiry.

Q. You have the books in which the entries were made? I ask for that, too. You have the books of accounts?

A. Yes, sir.

Q. When you produce them, will you be able to testify concerning them, or will we need the treasurer, too?

A. I think I would be able to testify as to any payments paid to counsel.

Q. As to any unpaid bills as well?

A. As far as they are in my possession, yes.

Q. When you say, "in your possession", they are in the possession of the Conference, aren't they?

A. What I am trying to say, Mr. Mays, is that it might be that there might be a bill for \$2,000 that hasn't been submitted, so it wouldn't be in my possession.



Q. I am not speaking of that. But when you say in your possession, you have in your possession whatever has been submitted to the Conference?

A. That is correct.

Q. To distinguish you from the treasurer or some other official?

A. That is right.

Q. Whatever has come in you would have and be able to produce?

A. Yes, sir.

Mr. Mays: That is what I am asking.

Thank you.

The Court: Does that complete your cross-examination?  
[fol. 98] Mr. Mays: Yes, sir.

The Court: Any re-direct?

Redirect examination.

By Mr. Hill:

Q. Mr. Banks, is it not a fact that at conferences and branch meetings—

Mr. Mays: This is his witness Your Honor, and we think the leading ought to stop somewhere.

Mr. Hill: I asked a particular question, whether or not the N. A. A. C. P. were still doing the same thing as they were before all this other evidence was adduced in response to the questions asked by Mr. Mays.

The Court: We will still follow the usual ways of asking the questions.

Suppose you rephrase the question in full. I am not sure I understood the question.

Mr. Hill: Mr. Mays was anticipating it.

By Mr. Hill:

Q. What types of problems are discussed at branch meetings and conferences of the State Conference?

A. Problems that generally affect the legal status of Negro citizens, their enjoyment of full constitutional rights, and whether or not there are denials of these rights, and so forth.

Q. Can you particularize as to the types of discrimination that are discussed?

A. Yes—educational discrimination, transportation, housing, employment, right straight on down the line, all types of discrimination are the general topics of discussion at branch meetings in the Conference.

Q. And has there been discussion of these types of problems in branches or by members of particular branches at State Conferences in communities where suits have not been instituted?

A. Yes, Mr. Hill. In fact, the only existence, the only reason for existence of the branch, I would say, is to make the general public aware of the fact that these discriminations exist, and whether there is action in that particular area is perhaps only incidental.

[fol. 99] Q. Had there been any discussion of the school situation in any of those communities where suits are now pending prior to the institution of suits?

A. Oh, yes, I would say yes.

Q. So far as you know, when did the Conference first start an active program with reference to educational facilities for Negro children in Virginia?

A. To my knowledge, Mr. Hill, the concerted program was started in 1947.

Mr. Hill: That is all.

Mr. Mays: Nothing further.

The Court: All right, you may step down.

(Witness temporarily excused.)

Mr. Hill: Your Honor, may we have a five minute recess to determine whether or not we have anything more?

The Court: All right. Five minute recess.

(Recess taken.)

#### PLAINTIFFS REST

Mr. Hill: We rest, Your Honor.

The Court: I take it that both complainants are resting?

Mr. Robinson: That is correct, sir.

The Court: Mr. Mays?

Mr. Mays: Your Honor, before calling our first witness, I would like to make this observation.

When this matter was heard in September of last year before the three-Judge Federal Court, several of counsel for the other side testified in those cases. At that time we were perfectly willing for them to do so without severing their participation, and that is still our view. I want to call Mr. Hill as a witness now, and I don't want him to feel that he would be precluded from acting as counsel if it be your pleasure to let him continue to do so.

The Court: All right, that will be satisfactory to the Court.

Mr. Mays: Mr. Oliver Hill.

---

OLIVER W. HILL, was called as a witness, and having been first duly sworn, was examined and testified as follows:

[fol. 100] Direct examination.

By Mr. Mays:

Q. Mr. Hill, please state your full name, residence and occupation.

A. Oliver W. Hill, 107 Overbrook Road, Richmond, Virginia. I am an attorney at law.

Q. And will you state what, if anything, is your connection with the Virginia Conference of the N. A. A. C. P.?

A. I am chairman of what is known as the legal committee, legal staff, of the Virginia State Conference of the N. A. A. C. P. branches.

Q. Do you have any connection with the Conference other than that, officially, I mean?

A. Well, no.

Q. Do you have any connection with the N. A. A. C. P. itself, the corporation?

A. Well, I am a registered agent for the corporation.

Q. For the State of Virginia?

A. For the State of Virginia, yes.

Q. Are you on the legal staff of the N. A. A. C. P.?

A. I am trying to recall now—to the best of my recollection, the situation had begun to develop to where it had begun to appear that you were not going to be able to arrive at desegregation in any cooperative fashion such as we had anticipated in the beginning, but that it would have to be brought about by litigation, and in discussion of the matter I think it was felt that it would be advisable and helpful if as many as possible of the lawyers who were in a particular community had some participation in the cases.

Q. So he hadn't been in one of those cases before, had he?

A. Not to my recollection.

Q. So that he was brought in so that he could sort of get the feel of things for future cases?

A. I think that was sort of the idea.

Q. In other words, it was sort of a school for lawyers?

A. If you want to call it that.

Q. Yes, I do. Well, he was to be compensated, wasn't he, for being there?

A. He would have been compensated had he been active at that time.

Q. He has participated in some degree?

A. He has participated, yes.

Q. And learned something?

A. I hope so.

[fol. 112] Mr. Mays: I am willing to go on as long as you want to, Your Honor.

The Court: I normally adjourn at one o'clock.

Suppose we take a recess until 2:15.

(Recess for lunch was taken from 1:07 p. m. until 2:15 p. m., the same day.)

#### AFTERNOON RECESS.

The Court: Mr. Mays, you may proceed.

(The trial was resumed pursuant to noon recess at 2:15 p. m.)

OLIVER W. HILL, resumed his testimony as follows:

Direct examination (Continued).

By Mr. Mays:

Q. Mr. Hill, in connection with the Charlottesville case, did you have any understanding with any of the plaintiffs as to the payment of counsel fees and expenses?

A. I think I told you this morning, Mr. Mays, that after the enactment of the statute I met with the plaintiffs in the Charlottesville case, and advised them of the passage of these statutes, and the possible interpretations that could be put upon them, in my opinion, and that in the event that they were held to be constitutional, in such an event the State Conference would no longer be able to sponsor litigation in the manner in which it has sponsored it heretofore, and in the case of such a contingency, then we would have to look to them individually for the reimbursement of the expenses that had been incurred.

Q. And that was agreeable to them?

A. Yes, sir.

Q. You had no understanding prior to that time with those people?

A. Other than that it was generally expected that the State Conference would sponsor the case.

Q. Indeed, is it not a fact that the State Conference held itself out to sponsor any school cases as long as the plaintiffs in those cases adhere to the principles and policies of [fol. 113] the Conference, that is, that the case would be tried as to a direct attack on segregation rather than equal facilities?

A. Now, at what time are you talking about?

Q. I am talking about from the time of the Supreme Court decision in 1954.

A. After the Supreme Court's decision in 1954 I don't think there was ever the contemplation of anyone that any of the so-called separate or equal facilities cases would be brought.

Q. But to answer my specific question, at least I thought I had made it specific, the answer is that the Conference

A. No—except that I have been retained as counsel for the N. A. A. C. P.

Q. In individual cases, but are you a member of the legal staff of N. A. A. C. P.?

A. Well, of the National Legal Committee with the N. A. A. C. P. Legal Defense and Educational Fund, and I have been a member of that committee for several years.

Mr. Robinson: Here is Mr. Banks again.

Mr. Hill: He can go ahead and get the exhibits ready, if he wants.

Mr. Mays: Mr. Banks is back in the courtroom, and I heard some colloquy as to whether he should stay. We may need him to testify again, and I think he should be excluded, as much as I regret to have him excluded, and he might utilize this time to get this information together this afternoon.

The Court: So I will know, is he leaving, asking to be excused for the day, or is he being excluded under the exclusion rule?

Mr. Mays: It would greatly help the case if he would find that material and get it back in the case.

Mr. Hill: My understanding was that Mr. Mays wasn't going to call him back any time soon, and we weren't going to call him. He was going to be excused to get the material. [fol. 101] Mr. Mays: I thought he could, and if it could be produced without a hardship on the witness he could bring it back and get it in the record of this hearing today. I had requested it for tomorrow. If it can be secured earlier, it will be better.

The Court: The Court will excuse Mr. Banks with the understanding that he will try to secure the records that have been called for sometime during the day if he can. I wish he would let the Court know at periodic intervals from, say, starting at 2:30, by phoning the Sheriff or my secretary as to whether he can produce them this afternoon, and if so, approximately what time, so we will know whether we can cover the rest of your testimony today, or whether we will have to wait until tomorrow.

You are excused, Mr. Banks.



By Mr. Mays:

Q. Mr. Hill, from former testimony I have understood that there is a legal committee which is also called legal staff of the Virginia Conference of branches, that is correct, is it not?

A. That is right, yes.

Q. And Mr. Banks testified that there were 13 members, and has named those members, and you have heard his testimony about three others being added since that time?

A. Two.

Q. Two others. Is that correct to the best of your knowledge?

A. Yes.

Q. Do you remember when the legal staff was first set up as an official legal staff?

A. Well, as I stated before, it was set up sometime during the war years while I was in the Army, and I was made chairman—I don't know whether it was actually the first meeting of it, or whether I was made chairman in absentia—but it was very close anyway.

Q. Now, when did it begin to function? Let's get at it in that fashion. I understand it was set up during the war, and you were not here?

A. That is right.

Q. And who set it up, do you know?

A. Well, prior to going in the Army we had discussed the situation—put it this way—prior to going in the service I had been very active in this same type of matter involving teachers' salaries, bus transportation for Negro children in [fol. 102], rural areas, and things of that nature. In some of these cases Mr. Martin, who was at that time practicing in Danville, worked with me.

Q. That is Martin W. Martin?

A. Martin A. Martin.

Q. Martin A. Martin?

A. That is right. During this time younger lawyers started coming into the state. As I was going in the army Mr. Robinson was taking the examination, and we had agreed to set up a partnership. Mr. Cooley had worked

with us on some of the cases, and Mr. Valentine. So there had been discussion about working together on the cases. It grew out of that. As I say, I don't know who called them together or anything, but I know there was a background to it, and that is the way the committee got together.

Q. It started out as an informal meeting of lawyers who had a common purpose, I take it, and a common interest?

A. That is correct.

Q. When did the legal staff become the official legal staff of the Virginia Conference?

A. To the best of my knowledge, somewhere around 1945 or 1946.

Q. And that was just about the time you came out of the service?

A. Yes.

Q. So it began to function then as an actual legal staff right after the war, and you were the chairman of it from the inception, were you not?

A. That is right—I might say that there was a general reorganization of the State Conference and all that sort of thing. We employed an Executive Secretary, and sort of built up an organization around that time.

Q. When you say "we employed a secretary," you mean the State Conference?

A. The State Conference, yes.

Q. And that was Mr. Banks, was it?

A. Mr. Banks was the first person employed.

Q. So he has been the executive secretary of the Virginia Conference of branches since 1945, and you have been—

A. No, since 1947.

Q. 1947—and you have been chairman of the legal staff since it began right after the war.

A. That is right.

[fol. 103] Q. Do you remember the personnel of that legal staff as of the time it was first created?

A. Well, as best I can recall, Martin A. Martin, Spotswood W. Robinson, III, Robert Cooley, and I think Edward Brown was one of the earlier ones, I can't just—those were in the earlier group, anyway.

Q. Yes. And then you added to that from time to time until it got to its present size?

A. Another fellow, Walker, Wendell Walker, from Newport News.

Q. When did he come into it?

A. Oh, I am sure he was in the earlier group.

Q. Now, as I understand it, this legal staff is elected at the annual convention of the Virginia Conference of branches?

A. That is right.

Q. And who nominates them?

A. The nominating committee of the State Conference.

Q. And the nominating committee gets its recommendation from whom?

A. It gets its recommendation from the legal staff.

Q. So that I take it at the inception, this informal group of lawyers was formally nominated as the legal staff or legal committee of the Conference and was elected at an annual meeting somewhere around 1946 or 1947?

A. Somewhere back there, but initially the members were just nominated the same as any other officers were nominated. It was subsequently that the nominating committee sort of took the recommendation of the legal staff.

Q. Well, back over a period of, shall we say, seven or eight years anyway, it has been the practice, hasn't it, for the nominating committee to put up the names of those that the legal staff itself recommends?

A. That is right.

Q. And so you as chairman, I take it, informed the nominating committee that you wanted to re-elect the same staff, or make whatever changes you would like to make, and then they put these people's names in nomination, and they are duly elected?

A. That is right.

Q. As a matter of fact, they never have any additional nominations from the floor in any of these cases either, do they?

A. You mean with respect to the—

Q. For the legal staff.

[fol. 104] A. To the legal staff?

Q. Yes.

A. Not in a long number of years, to my recollection.

Q. So that the legal staff can in a sense perpetuate itself by telling the nominating committee who it is they want to continue to have on it?

A. That is correct.

Q. Now, do people come to you from time to time, or as far as you know, to other members of the staff, and suggest that other lawyers be added to it?

A. Suggestions may have been made from time to time, and other lawyers have been added from time to time.

Q. Do those suggestions come from laymen, or do they come from some of the lawyers who would like to be members of the legal staff?

A. Well, they principally come from the branches, the lawyers spoke to the branch president, I don't know.

Q. How the lawyer gets into it you don't know, but the branch president will talk to the nominating committee or talk to you, rather, to find out whether you would like him added to the staff.

A. That is one way. And there have been suggestions emanating from the existing members on the committee as to lawyers who have demonstrated an interest and willingness to devote the time and understanding vagary phases incident to this type of activity.

Q. Well, now, could you on any occasion reject those who seek places on the legal staff?

A. I can recall on one occasion where a suggestion was made for the inclusion of a person that never was included. Now, I said it that way because there have been others whom it has been suggested be put on the legal staff, and maybe this year or next year they wouldn't, but subsequently they have been, but this particular individual, he never was.

Q. I don't want in the slightest way to embarrass you with names. I don't want to do that. I feel that if I were sitting where you are I might not like to go into the names of those who were rejected, but when you do turn a lawyer down, either suggested by somebody else or yourself, is that due to incompetence, or you have enough lawyers already, or what would be the controlling reason?

A. Well, in this particular case I have in mind, the lawyer that never was accepted, there was a strong feeling on [fol. 105] the part of several of the members, maybe, that he was incompetent, that had a whole lot to do with it. Well, it has been a cooperative, good-working relationship, and we didn't feel that he would add anything to it.

Q. It wasn't due to the fact that he was so geographically located that he would cut in on somebody else?

A. I don't think that has even been any consideration. You don't have that many lawyers who are active and interested. As a matter of fact, I know that has never happened—you say cut in on somebody else. I assume you mean—

Q. Getting his share of legal business.

A. All right—for this reason, that is no factor, because usually in communities where there are more than one, if they are interested in participating, they will all participate anyway.

Q. You mean that anybody who is in a community affected can get in that wants to get into a pending case?

A. No, what I mean to say is that usually in a pending case, if there are two or three lawyers in a particular community, they usually do get into it, that is what I mean to say.

Q. In other words, if any lawyer in a community wants to get into a case pending in that area, he gets in, and there is no question asked about that, is that true?

A. I don't know, because I don't know whether I am following your question correctly.

Q. Let me be more specific. I thought we understood each other. A case involving education is brought, say, in a community in which there is more than one lawyer on the staff. That might be Richmond, it might be Norfolk, and one of those lawyers is given a job to do. Is the other lawyer always free to get into that case if he so desires?

A. Well, let's try to describe it a little differently. As a practical matter, in the cases that we have had up to the present time, anyway, either working in conjunction with some of the other lawyers, one of the other lawyers brings him in, or people consult the two lawyers or three lawyers, as the situation may be in that situation, all together. In a

community that is the usual situation. Say either the first lawyer brings the other one in, or they happen to coincide.

Q. It is pretty well understood, isn't it, or is it, that any [fol. 106] lawyer in a locality where litigation is pending, if he is on the legal staff, can get into the case if he wishes?

A. What I am hedging about is—

Q. I notice that, but I don't want you to do it any more.

A. What I am hedging about is the approach you seem to be taking. The one who has it draws the other one in rather than saying, you have got a case, let me in it.

Q. Anyway, he winds up in it?

A. Yes.

Q. It is usually understood in a community that when one lawyer gets in a case he brings in the other staff lawyers in that community? Can you think of any exceptions?

A. I can't say—well, there haven't been that many cases in the respective communities to be of—yes, I can think of one—no, I can't, I can't think of any.

Q. As far as you now remember—and if you think of an instance later, bring it up and tell us—as far as you now remember, whenever one of these school cases gets started in a community that has more than one lawyer, all will be in it?

A. I can think of one instance right now. You take the present Norfolk case. Mr. Overton is in that area. He is not counsel in the case, although he and Mr. Ashe all have been in it prior.

Q. When did Mr. Overton go on the staff?

A. Last year.

Q. That was when the case was brought, wasn't it?

A. Yes, but he wasn't brought in on the case.

Q. So far as existing members of the staff are concerned, if you have a case in the community where there is more than one staff lawyer, then they all get in?

A. Well, the only thing I can say is that they are all in.

Q. O. K. Have any of the members of the staff who were originally members or who subsequently came on the staff been dropped?

A. No, sir—yes.

Q. Who?

A. One lawyer.



Q. Who is that?

A. Well, it is a lawyer in the Tidewater area.

Q. Is he a lawyer you have not enumerated?

A. You mean—

Q. Whose name has not come up?

[fol. 107] A. Oh, yes, I have mentioned his name.

Q. If he has been enumerated in the picture, who is he?

A. Mr. Wendell Walker from down at Newport News.

He was dropped.

Q. And when was that?

A. He withdrew, oh, seven years ago.

Q. Was that at whose instance?

A. Well, I think it was at the legal committee's instance. He became inactive. He was not doing anything.

Q. Well, now, you have had some litigation in Newport News. Who are the counsel of record in that case, the school case?

A. W. Hale Thompson, and Philip Walker.

Q. Aren't you in it?

A. I say, I haven't completed.

Q. I am sorry.

A. The residents in Newport News, Spotswood Robinson and myself.

Q. How did you come into it?

A. At the request of Mr. Thompson.

Q. How did Mr. Robinson come into it?

A. At the request of Mr. Thompson.

Q. Through you or directly to Mr. Robinson?

A. Directly to Mr. Robinson.

Q. I take it that in that case there were written authorizations for counsel to appear?

A. I was so advised.

Q. Have you seen them?

A. I don't think I have.

Q. Do you know to whom the authorization ran?

A. To Mr. Thompson and Mr. Walker.

Q. As individuals?

A. As individuals, and I am almost certain that the authorizations authorize them to associate with other counsel.

Q. But you don't know, do you?

A. I wouldn't want to take an oath that I read it, because I haven't.

Q. What understanding did you have with reference to the compensation in that case as to yourself?

A. In the Newport News case?

Q. Yes.

A. Oh, it was sponsored by the Conference, and I expect the Conference to compensate me.

Q. Have the expenses that you have advanced been reimbursed?

[fol. 108] A. I think that in Newport News all of them have.

Q. And what about fees for the handling of the case, has any part of them been paid?

A. Yes.

Q. The greater part?

A. Offhand, I don't remember an individual case in that situation, but I know that I have been compensated.

Q. Now, did you have any understanding, or as far as you know did any other counsel in the case have any understanding, with the plaintiffs as to who would pay the expenses and legal fees?

A. Will you repeat that, Mr. Mays?

Mr. Mays: Will you repeat the question, Mr. Reporter?

(The question was read.)

The Witness: All counsel except Mr. Robinson had an understanding, and at least expected the Conference to compensate.

By Mr. Mays:

Q. Mr. Robinson. Didn't they propose to call you on retainer from the N. A. A. C. P.?

A. That is right. In a lot of these cases these statutes were inactive, and before anyone had an opportunity to study them, there was quite a problem as to what effect these statutes would have on an attorney attempting to assert the constitutional rights of Negroes upon the questions. I am positive that he did, because I advised him so to do, and in the other case that I had at that time I did

contact the plaintiffs and advised them of the action of the Legislature of Virginia in its efforts to keep the N. A. A. C. P. from functioning, and pointed out to them that it might, if these statutes were to be held constitutional, it would, of course, prohibit the N. A. A. C. P. from functioning in the fashion in which it was functioning, and that counsel would have to look to these individuals for the reimbursement of the expenses and some compensation.

I know that insofar as my personal statements to the people were concerned, I assured them that any requests for compensation would be very meager, if any at all.

Q. Now, in the Charlottesville case, will you tell us just how you came into that, who the counsel were?

A. I came into it when Mr. Ferguson—put it this way—[fol. 109] the immediate step leading up to it, Mr. Ferguson came by my office one day and said that he wanted me to come up and talk with the parents.

Q. Will you identify him?

A. He is Dr. George Ferguson.

Q. What was he?

A. He was the president of the Charlottesville branch at that time.

Q. Is he a physician?

A. No—when I said “doctor,” I am sorry. He is not a doctor, Mr. Ferguson, he is the funeral director.

Q. Right.

A. But let me say this. It is hard to say in a large number of these communities just what was the initial contact. You take a situation like Charlottesville. It was one of the areas which was involved in discussions with respect to teachers' salaries. There have been a lot of meetings and things. You talk with people. You know what the problem is in a particular community. Now, at some stage somebody or something occurs, and they write you about the case, but just to say what was the initial contact makes it a little difficult.

But I do happen to recall that the thing that got me to Charlottesville to meet with the group of parents, at which time I was authorized to represent, was the call from Mr. Ferguson.

Q. Now, you appeared there and had a meeting with the prospective plaintiffs in response to his call?

A. With respect to his visit.

Q. Yes. And then you obtained from those people written authorizations running to yourself to handle the litigation?

A. That is right.

Q. I believe I heard someone suggest at some time that some of those were in blank, is that correct?

A. The authorizations were written up in blank, they were prepared not only for my use, but for the use of any attorney that had need for such written authorization. In some of the authorizations people filled my name in. Some of them they left blank and my name was subsequently typed in at my office. I think I so testified.

Q. I assume that you put your name in in the firm belief that the people intended you to be the lawyer growing out of that meeting. You expected that everybody intended you to be their counsel?

[fol 110] A. Oh, yes. I had discussed the situation with people. I told them I could only act upon some written authorization—there were a number of reasons for having written authorizations; as you well appreciate.

Q. I can fully appreciate that.

Now, did they give written authorizations to any other attorneys?

A. There was no other attorney present, and so far as I know, for a long period of time no other attorney met with the parents as a group except myself.

Q. Now, did they at any time in Charlottesville give written authorization to any attorney other than you?

A. Only in that the authorizations they signed authorized me and such other attorneys as I may associate with them.

Q. Is this a proviso, that you were free to authorize others?

A. That is right.

Q. Now, who else did you bring into the case?

A. Well, at first Mr. Robinson, Mr. Tucker, Mr. Martin and Mr. Ely, because it was one of the first ones that we instituted after the Supreme Court decision. But actively participating in the case it would only be Mr. Robinson and

Mr. Tucker, and Mr. Carter was down at the trial of the case in Charlottesville in 1956.

Q. Now, these various lawyers you mentioned became counsel of record within a reasonably short time after the suit was brought, did they not?

A. Yes—well, if they were counsel of record at the time, of course.

Q. Now, Mr. Robinson, and did you mention Mr. Martin?

A. Yes.

Q. And both of those are partners in your law firm. Now, was Mr. Robinson still in your law firm at the time that suit was brought?

A. Let's see. That suit was instituted—no, at the time that suit was instituted we had several in the partnership.

Q. Now, you brought Mr. Ely in, and where does he reside?

A. In Richmond.

Q. And Mr. Tucker, he came from Emporia?

A. Yes, sir.

Q. And who was the other lawyer?

A. Mr. Martin.

Q. There were five altogether?

[fol. 111] A. Yes.

Q. Now, did Mr. Tucker make any contribution to the case, any unusual contribution to the case, or was he simply there as reinforcement?

A. At what stage are you talking about?

Q. At any stage.

A. Oh, yes, sir, he is actively participating in the case.

Q. I notice you brought him from quite a distance, and ordinarily you confine this to the people in the general locality, don't you?

A. Well, there were no lawyers in the county in which Charlottesville is located.

Q. Yes, but there were some in Richmond and Emporia, some distance away.

A. Another 60 miles.

Q. And I wonder if there was any particular reason for bringing him up there when you had some other lawyer?

A. Well, I can't say that we couldn't have done without him.

Q. Then why did you have him?

would not stand in back or aid any cases unless they went all the way under the Supreme Court decision?

A. That is true.

Q. And in those communities where the parents wanted to bring those suits, in each instance the Conference would pay the expenses of the litigation?

A. That is true.

Q. And that was generally known as far as you know?

A. I think so.

Q. And it was brought home by you and others to prospective litigants from time to time?

A. Not only brought by me and others in the public press, but in our conventions and in branch meetings—it was widely known.

Q. In other words, the word was out, and as far as you know it was well understood that the staff was there to render service for them when they needed it in that type of case, and that the expense would be borne by the Conference?

A. Upon request, yes.

Q. And was it not further understood, or did not you members of the staff and the officers of the Conference further inform them that it would have to be done by counsel with members of the staff themselves, rather than by independent counsel?

A. I don't know that that was generally understood.

Q. Well, as far as you know, whether it was generally understood or not, as far as you know, you gave that impression, didn't you, in talking with these people?

A. No.

Q. Very well. Turning now to the Norfolk case, were you in that?

A. Yes, sir.

Q. What other lawyers were?

A. Victor J. Ashe, and J. Hugo Madison, Spotswood [fol. 114] W. Robinson, I was in it, and there was also Mr. Joseph Jordan.

Q. Mr. Ashe and Mr. Madison, they are Norfolk lawyers?

A. That is right.

Q. Were they first in the case?

A. Yes.



Q. And did they obtain, or one or more of them obtain written authorizations from the plaintiffs?

A. Yes, sir.

Q. Did both get the authorizations, or one?

A. I am not in a position to say.

Q. You don't know?

A. I don't know.

Q. Do you know whether those authorizations ran to other lawyers than those two?

A. I would have to say it like I said as to the Newport News situation, I am positive that they did, although I couldn't say it of my own knowledge.

Q. Maybe you are saying more than you intend to say. Let's be quite certain. What you mean by that is that those two lawyers in Norfolk had authorization, and in turn had authority to bring you in, rather than you with respect to them?

A. I doubt it.

Q. Were you first brought into that case after the two Norfolk lawyers were employed?

A. I didn't understand you.

Q. Were you the first lawyer brought in from the outside to participate in that case after the Norfolk lawyers were employed?

A. I couldn't say whether I was first or Mr. Robinson was first.

Q. You were both called on about the same time?

A. I would imagine about the same time.

Q. You wouldn't know for certain?

A. I couldn't say.

Q. Do you know who brought you into the case?

A. Mr. Ashe.

Q. Now, when did the other lawyers come in?

A. You mean Mr. Jordan?

Q. Yes.

A. He came in as an intervenor—as an attorney for some intervenors in the summer.

Q. He was employed by them and came in to intervene for them?

[fol. 115] A. He came in representing them.

Q. And is he to be paid by the Conference, as far as you know, or by the intervenors?

A. There wasn't any understanding about the Conference.

Q. As far as you know, he was employed by the intervenors?

A. As far as I know.

Q. And the intervenors will pay him?

A. He has never requested any compensation, but to be technical about it, I don't know, it will have to be considered.

Q. How many intervenors did he represent approximately?

A. In Norfolk?

Q. Yes.

A. You are talking about Mr. Jordan?

Q. That is right.

A. I don't recall the exact number.

Q. I meant approximately.

A. Frankly, Mr. Mays, that came in at such varied times and in such a fashion that I just couldn't remember.

Q. I fully appreciate that difficulty. Could you approximate the number of plaintiffs in the Norfolk suit?

A. Well, there were, I would say, about 50.

Q. Now, these intervenors represented by Mr. Jordan, did they come in of their own volition, or was it suggested by the Conference that further intervenors come in?

A. I am sure they came in of their own volition. In other words, Mr. Ashe and Mr. Madison had intervened other people. When they got together about it I don't know. There was no problem about the case becoming moot or anything of that nature unless somebody else came in.

Q. Do you know whether the counsel in that case other than Mr. Jordan, who represented any intervenors, had been paid wholly or in part for their services?

A. In the Norfolk case?

Q. Yes.

A. They have been paid in part.

Q. And when was that payment made, do you recall?

A. I don't recall the time. They submitted a bill, and I know they have received payments on account, I know that.

Q. At the time you testified in September of last year in the three-Judge Federal Court, I think very few payments had been made?

A. That is true.

[fol. 116] Q. And is it fair to say that any payments that have been made since have been made since April of this year?

A. Well, I wouldn't recall exactly about fixing April as the beginning, but certainly they have been made this year.

Q. Well, they have been made either in the spring or summer of this year?

A. That is right.

Q. In other words, isn't it true that the payments that were made to counsel in those cases were made after the decision of the three-Judge Court, which I believe was in April?

A. I would think that—I wouldn't want to say that no payments were made prior to that time, but I would think that the majority of them were made after that time.

Q. I take it that counsel felt sufficiently encouraged by the Federal Court decision that there might not be any trouble if they accepted the payments thereafter?

A. I certainly think that strengthened their belief.

Q. Yes.

Now, if we might turn for a little while to the Arlington cases. Who are the counsel in that case—in those cases?

A. Well, now, in Arlington there have been what could be described as two cases; one, the original case, was an equal facilities case. And that one was Mr. Robinson and Mr. Leon A. Ransom. Since the Supreme Court decision there has been another case in which there have been the original plaintiffs and then subsequent intervenors. In that case—

Q. As a separate case?

A. Yes, as a separate case. I said there were two cases.

Q. Yes.

A. Now, in the case since the Supreme Court decision, there was Mr. Edwin Brown, Mr. Robinson, Mr. Otto Tucker, Mr. Frank Reeves.

Q. Otto Tucker, he is the brother of the Tucker in Emporia, isn't he?

A. That is right.

Q. Are all of those five counsel still in the case?

A. Well, Mr. Robinson, Mr. Reeves, Mr. Tucker, and I am still in the case. I don't know just what the status with reference to Mr. Brown is. I met with some of the plaintiffs early in the spring, and they had no wish about it one way or the other. They didn't commit themselves. They didn't make any request about it. So he hasn't been dropped. On the other hand, he hasn't been active.

Q. Well, he is not in active practice now, I think.

[fol. 117] A. That I am not certain about.

Q. Who first came to the Arlington case? I mean the school segregation case, what counsel first came into that case?

A. Mr. Brown.

Q. By himself.

A. Yes.

Q. And did he get the customary authorizations as far as you know?

A. Yes, sir.

Q. You haven't yourself seen them?

A. I have a vague recollection that I did see some of them, but I am not certain of it, I don't remember.

Q. As a matter of fact, I have the impression somehow that you have, and I wonder if that refreshes your memory?

A. Well, I will put it this way. I prepared an authorization form that only required the information with respect to the parents, children, schools involved, and the attorneys.

Q. But you didn't handle it beyond that point?

A. That is right.

Q. Now, can those particular authorizations in the Arlington case have the usual clause that you referred to authorizing the lawyer specifically named to bring in an associate counsel?

A. I am reasonably certain they did.

Q. Is that the kind of form you used in all these cases?

A. Yes.

Q. Did you use that same form in the Prince Edward case?

A. I am inclined to think that we did not. As I recall, the authorizations really went to Hill, Martin and Robinson.

Q. And after that you amended the form so that you could authorize other lawyers?

A. Yes.

Q. And, as far as you know, except in the Prince Edward case you used this amended form?

A. I wouldn't say except the Prince Edward case, since the Prince Edward case, we will say.

Q. Very well.

Who did Mr. Brown bring into the case first after he became counsel?

A. Mr. Robinson and me.

Q. Did he get directly in touch with you or Mr. Robinson?

A. My recollection is that he got in touch with Mr. Robinson first. But put it this way: He probably talked to [fol. 118] Spot over the telephone one day, and he talked to me the same day or later, but my recollection is—

Q. I happen to know what you mean by "Spot", but tell the Court.

A. Mr. Robinson.

Q. In other words, it is pretty well understood that if they got one the other was going to be in right away anyway, isn't that true?

A. Well—

Q. That is the way it worked?

A. That is the way it worked, beyond a doubt.

Q. Well, you two came in, and who came into the case next?

A. Well, that case went to the Supreme Court. And this year—I don't know which one came in first, whether it was Mr. Reeves or Mr. Tucker. I don't recall right now. The reason I said I don't recall, some of the intervenors contacted Mr. Tucker, and some of them contacted Mr. Reeves. Just which was first I don't recall right now.

Q. Then Mr. Tucker and Mr. Reeves were brought in by intervenors and not brought in by counsel already in the case?

A. Well, so far as Mr. Tucker was concerned, some people spoke to me, and I suggested to them that they talk to Mr.

Tucker, so I was responsible for Mr. Tucker becoming involved in that. Some of these people talked to Mr. Reeves, and he contacted me relative to the fact that these people had discussed the situation with him, as to my position, and he invited me in.

Q. In either case, did you go to him to suggest bringing in intervenors?

A. They came to me with the intervenors.

Q. And that was the first you knew about the proposed intervenors?

A. No, sir.

Q. What was your first knowledge?

A. Well, we intervened, the plaintiffs, a year ago, and they were ordered admitted. And as you know, the case was appealed, the admission was stayed. Several people in Arlington from time to time have contacted me. And as I say, we have met with a number of the original plaintiffs, and other people who were interested, in the spring. Now, some of those people, some of the people that Mr. Reeves and Mr. Tucker—I can't say all of them are different, some [fol. 119] of them are the same people.

Q. Now, wasn't it the policy in these cases as far as you know, when people came to seek intervention in a case, to require them to employ their own counsel, or didn't you on occasion become the attorney for them and intervene for those parties yourself?

A. Will you read that back? I didn't get the purport of that.

(The question was read.)

A. Well, on several occasions we have intervened for people ourselves.

Q. When you were already in the case?

A. Already in the case, yes.

Q. Did you have some particular reason for having these two lawyers intervene in Washington rather than appear as counsel for the parties yourself?

A. The only reason for it was approximate to the people, that was the primary reason.

Q. Where does Mr. Reeves live?

A. In Washington.



Q. And what is his full name?

A. Frank D. Reeves.

Q. And where does this particular Mr. Tucker live?

A. In Alexandria.

Q. And you wanted them in because they lived nearby?

A. Well, remember, now, Mr. Tucker was right there in Alexandria.

Q. I say, they lived nearby the Court?

A. That is right.

Q. Had this Mr. Tucker been in any of these cases before?

A. No.

Q. Had Mr. Reeves been in any of them before?

A. He had been in school desegregation cases before, yes.

Q. Wasn't it at least in part true that you brought in this particular Mr. Tucker for the same reason you did his brother who lives in Emporia, so he could get his feet wet and get familiar with this type of litigation?

A. No. As I say, the primary reason was that he was right in that locality.

Q. Did you bring in any other lawyers in other cases for [fol. 120] that reason so that they could get familiar with the thing, that type of litigation, for future use?

A. No, I can't say that.

Q. Only the Tucker in Emporia?

A. Well, he is the only one at any distance that has been involved in any cases.

Q. You mentioned a moment ago that the authorization for the Prince Edward case was different from that in the other cases, in that I think it designated the particular lawyer who was to function, but did not authorize him to bring in associates; that is right, isn't it?

A. It has been a long time since I have seen one of those forms, but to the best of my recollection it did not authorize us to include anyone else, although I wouldn't want to say that it did for positive. I just don't have any recollection of doing so. In other words, if I had to make a guess about it, I would guess that it just said, "Hill, Martin and Robinson."

Q. I am sorry about that, because you were testifying positively a few minutes ago as to the difference, as I remember your testimony.

A. Well, I haven't varied from it, to my recollection.

Q. Very well.

Now, who was named in the authorization for Prince Edward's County?

A. Hill, Martin and Robinson.

Q. Were any other lawyers associated thereafter?

A. No local lawyers.

Q. Well, have any other lawyers been associated, local or otherwise?

A. Well, in the trial of the case Mr. Carter was present—I was trying to remember whether Mr. Marshall was down or not. I don't think he was. I think it was Mr. Carter.

Q. And who brought him in the case?

A. I did.

Q. There was no specific authorization for that, I take it?

A. Not that I recall at the present time.

Let me say this, Mr. Mays, so that you may understand our position about this thing. We don't regard the prosecution of a person's constitutional rights in the same strictness that you would regard, say, handling a contract litigation for a particular individual client. This is something that the N.A.A.C.P. was sponsoring. These people are actively connected with the N.A.A.C.P. and known to be, and these people whose rights we are trying to protect and assert are [fol. 121] interested in getting the vindication of their rights, and they are not as much concerned about the particular lawyers in the majority of instances—as to the number of lawyers, put it that way—as a client would be who was involved in a particular single piece of private litigation.

Q. I am keenly aware of that, and I am glad to have you state it so clearly. As a matter of fact, the members of N.A.A.C.P. understand, do they not, that if they have this sort of problem they are entitled to have, without any financial liability on their part, representation by counsel from the staff?

A. No, sir, I wouldn't say that, not as being members of the N.A.A.C.P., as being members of a disfranchised and disadvantaged minority. It is pretty well understood that the N.A.A.C.P. will do this.

In other words, put it this way. You don't have to say, "I am a member of the N.A.A.C.P." to get the N.A.A.C.P. to defend you in any particular area in which it renders legal assistance. I mean, they do it on the basis of racial discrimination.

Q. When you say "area," you are not talking about geographical area, but area of discrimination?

A. That is right.

Q. Now, of course, you understand, do you not, that we have a person coming in to have a constitutional right vindicated, that person is asserting the right as it applies to him as an individual?

A. That is true.

Q. So that, of course, it doesn't matter how many people are involved in the litigation, everyone is asserting his own individual right and not someone else's?

A. He is asserting his own individual right, but in the assertion of his individual right, and in getting, say, a statute declared unconstitutional, we recognize it not only affects him as an individual, but it affects all other Negroes in similar situations.

Q. Yes, but it is his individual constitutional rights in any instance?

A. True.

Q. Now, you were counsel also, were you not, in this relatively new case in Warren County?

A. That is true.

Q. When did that situation in Warren County first come [fol. 122] to your attention? Maybe I am too indefinite when I say the situation—

A. Yes, because I have been aware of the situation for a long time.

Q. You have been aware of this for a long time, but the time did come when you and certain people that became plaintiffs came together in the Warren County case?

A. I think I can answer it this way.

Q. Very well.

A. This year, as best I can recall, sometime in April, a committee from the P.T.A. up there, I think it was—anyway, they came down, they made an appointment on a Saturday and came down and discussed their situation, and

stated they wanted to do something about it, that they had talked to the superintendent. He told them that they weren't going to let them go to the schools there. They had their choice, and they were going to give some of them a choice to go to Berryville or over to Warrenton, and they wanted to know whether something could be done about it.

Q. For the Court's information, is the situation this: There were no colored schools in the county. They were being transported by bus to schools in other counties.

A. That is right. There were no high schools for Negroes in Warren County. The children were being sent to the regional school in Manassas, or some of them were sent to Berryville up in Winchester County.

Q. And they came to Richmond to consult you about that situation?

A. That is right.

Q. And you had no contacts with them before that?

A. I had no contacts.

Q. As far as you know, had any member of the legal staff had any prior contact with them in connection with that immediate problem?

A. I am not sure, but so far as I can recall right now, no—I wouldn't want to say that nobody talked to them. Mr. Brown may have talked to them, or they may have talked to somebody else, I don't know.

Q. Would you answer me the same as to the officers of the Conference, so far as you know they had not been in touch with them either?

A. I wouldn't want to say that, Mr. Mays. I wouldn't be a bit surprised if they hadn't talked to somebody in State [fol. 123] Conference, because a lot of these people travel around, and they talk.

Q. I am talking about officers of the State Council, as far as you know, had they talked about these prospective plaintiffs before they saw you, as far as you know?

A. I don't know.

Q. You had never heard it?

A. I have no recollection.

Q. Your first impression was this meeting of the P.T.A. people who came to see you, is that right?

A. Yes.

Q. Can you fix that time a little closer?

A. Well, I know it was in April, and the reason I know it was in April was because we set up a subsequent meeting for May 17, and I know it was several weeks.

Q. Now, was that meeting held on May 17?

A. Yes.

Q. Were there any meetings or conferences between you and these prospective plaintiffs in the meantime?

A. No.

Q. Or as far as you know, were there any conferences involving them and officers of the Conference?

A. Not so far as I know.

Q. Or the staff?

A. Not so far as I know.

Q. And the next thing that happened was on May 17?

A. That is right.

Q. Where was that and what happened?

A. Well, for the first time I went to Front Royal and met with—you see, a committee came to see me, and I met with the group of parents at the church there, and there were also about two or three people present that apparently weren't parents and didn't have any children involved.

Q. It was an open meeting, I take it?

A. No, apparently it had not been—it was a meeting of people from out in what they call the Happy Creek Section; the reason I mentioned the fact that there were one or two other people there, they mentioned the fact that had they known about it they were certain that other people would have been there.

Q. What I meant by open meeting, nobody was excluded from it?

A. So far as I know, no.

[fol. 124] Q. Did you address that meeting?

A. Yes.

Q. What did you tell them?

A. I explained to them the constitutional—what the import of the Supreme Court decision was, and what their constitutional rights were. We were talking about a particular situation that had reference to sending the children out the county. I pointed out to them that nearly ten years

ago, in Pulaski County, the Court of Appeals, even under the old separate but equal doctrine, had declared that such action was an unconstitutional infringement of the rights of the children involved, and statements along that line. I also pointed out to them the vices of segregated education, that in my opinion children, Negroes, would always be disfranchised as long as they were segregated, and the necessity of making a contribution to the development of democracy by breaking down segregation in the respective communities.

Q. Did you specially urge any course of action on them?

A. No, I didn't urge any course of action. I made a talk about the situation. I had already been contacted with reference to doing so, and I explained to them the steps that would be taken.

Q. When you were contacted about doing something, did the people at that time indicate what they wanted you to do?

A. The committee?

Q. The first meeting. The committee meeting.

A. Yes.

Q. What did they say they wanted you to do?

A. Well, they asked me what could be done, and I explained to them what could be done, and they showed their assent, that they were willing to do that. That is all. In other words, nobody said, "I want you to bring the suit right now", or anything of that nature, but they did state that they wanted to be petitioners in this matter. They gave me authorizations while they were here at Richmond, and then I gathered other authorizations at this May 17 meeting.

Q. The committee was here in Richmond in April, you advised them what their legal rights were, and you then obtained from those present authorizations to act from them?

A. Yes.

Q. To do what?

A. To take such steps as may be necessary to secure for [fol. 125] them non-discriminatory public school education for their children.

Q. There was no question in the minds of you and those plaintiffs as far as you were concerned, was there, that



what you were going to do was to file a prompt suit in the Federal Court?

A. Well, it depends upon your definition of prompt, but I advised them that before anything could be done we would have to petition the school board to give them an opportunity to do something.

Q. And if the petition were rejected, as you suspected, you would then go to the Federal Court?

A. That is right.

Q. And did you not tell them also that you would not be interested in getting in the case, nor would the Conference be interested in getting into the case, unless they went all out to abolish the segregated schools?

A. Well, I am certain that—I don't know that it was put in just the way you expressed it, but I am certain they were advised that the Conference would not support any other type of litigation.

Q. And you were not interested in getting into it?

A. As a matter of fact, I wouldn't have gotten into it.

Q. In other words, to put it plain, in all of these situations didn't you tell parents who wanted to get some redress that you and the Conference would not get into it unless it went all the way?

A. I don't like the use of your words "all the way".

Q. Stop at any point you want.

A. Let me explain. I pointed out to them that the only—I would consider it a waste of my time and of their effort to seek so-called separate but equal facilities, and consequently, if they wanted to put forth the effort to abolish racial segregation, which ultimately would be of some benefit to them and their children, why I would be willing to work, and I was certain that we would get the Conference to support that type of litigation, if that answers your question.

Q. I think we are getting along now. Fine. When they came in to see you in April, did they have any of the officials of the Conference with them?

A. No, sir.

Q. Did they have any officials of the legal branch with them?

A. No, sir.

[fol. 126] \* Q. And no one came except the parents?

A. That is right. As a matter of fact, Mr. Mays, the president of the legal branch complained on May 17 because she had no knowledge of this thing until she came to that meeting, or somebody advised her.

Q. She hadn't consulted with them before she came to see you in April?

A. Apparently not.

Q. And no other official of the local branch had as far as you know?

Q. Now, after you got those authorizations, when they first came to you in April, did you tell them that you ought to have more plaintiffs in that?

A. No, I didn't tell them that. They wanted to talk, to report back to the group that sent them, and the suggestion was made that they arrange a meeting up there, and as a matter of fact they went back, and I don't know whether they called me or not, but we finally arrived at May 17.

Q. How many authorizations approximately did you get at that May 17 meeting?

A. I don't know. I think it must have been somewhere in the neighborhood of 16 or 17. I figure we had around 20 all together, or 23.

Q. Then you had three or four that come down to Richmond?

A. There were only four.

Q. Now, did you have any arrangement with those people about compensation other than that the Conference itself cleared?

A. No.

Q. When was the next meeting you had with them after the 17th of May with the plaintiffs or any of them?

A. It was this dinner meeting that Mr. Banks spoke of.

Q. That Freedom dinner?

A. They had—as an outgrowth of the meeting on the 17th, they said they would like for me to come back, and they arranged a Freedom dinner meeting. And as a matter of fact, I know it was in the latter part of July.

Q. And you addressed that dinner?

A. I was the principal speaker, yes.

Q. Did you indicate to the people there substantially what you have mentioned a while ago, that litigation was being carried on the basis of the Conference paying for it [fol. 127] provided it went to the defeat of segregation in the schools? Was that made clear to that group?

A. No, sir.

Q. You didn't discuss that?

A. I don't think we went into anything of that nature, no.

Q. When after that Freedom dinner did you next meet with the plaintiffs in the Warren County case?

A. I met such of the plaintiffs as journeyed to Harrisonburg on September 5.

Q. They were there, spectators, I imagine, at the hearing at Harrisonburg, is that right?

A. No, that was the date of the application for a preliminary injunction.

Q. Did you have any conference with them then?

A. Yes.

Q. How many plaintiffs did you have?

A. I didn't count them, but they had a large number of their children with them, and we pretty well filled up the juryroom there.

Q. Had you asked them to come?

A. Yes, I had advised them that we had that date for the application.

Q. Well, I assume that they were there to let the Court know their intent?

A. They were there to testify or to do anything that a plaintiff would normally do.

Q. You didn't have any discussions with them on that occasion, did you, the time you appeared before Judge Paul in Harrisonburg?

A. You say I didn't—

Q. You didn't have any discussion with them as a group about the case, did you?

A. Well, I talked with them prior to going into the courtroom, the normal type of conversation that you would carry on with plaintiffs, and I advised them that they might be called on to testify, and suggested that maybe we would just use two or three of them, and that type of thing.

Q. The normal type of conversation that a lawyer has with his clients?

A. That is right.

Q. Now, after the court hearing, I understand from Mr. Banks that you went on later that day to Front Royal?

A. Well, Mr. Banks had his dates a little confused. We [fol. 128] got the preliminary—we had the hearing for the preliminary injunction, that was on a Friday. In the meantime, we were involved in the Charlottesville school case, and we had a hearing set for September 8, which was on a Tuesday, or maybe a Monday, I don't recall right this minute myself.

Q. It was the following week?

A. It was the following week, anyway. So Judge Paul said for us to prepare the order and present it on, it must have been Monday, present it on Monday. On Monday he entered the order. Now, that would be the 8th. Either General Harrison or Mr. McElwain called up Chief Judge Soboloff and made an engagement with him for Thursday, and they advised him then that they were going to have this hearing in Baltimore for an application for a stay, and Judge Paul refused to grant a stay.

On that particular Thursday, which was the same day that the Supreme Court was hearing the Little Rock case the first time it came back after the recess, we met in Baltimore, and Judge Soboloff refused to grant a stay. At the conclusion of the hearing the attorney for the Warren County School Board, I can't recall his name—Phillips—Mr. Phillips contacted me and said, "Well, now, couldn't we handle this thing without a whole lot of anything that would be likely to create a disturbance?"

And I asked him what did he have in mind.

And he said, "Well, rather than have the children go to the white school, since it has been threatened that Governor Almond would close the schools, couldn't we agree to bring the children to the superintendent's office?"

I told him we would be happy to cooperate in any way, the only thing we were interested in was getting the children in school, we weren't interested in creating any disturbance. That was on Thursday.

Mr. Banks was in my company in Washington, and when I came back here on Friday, for reasons of mine, I didn't want to drive, and I asked him to drive me up there. He carried me up to Front Royal, and I met the plaintiffs and advised them of what had occurred in Baltimore, and why I had contacted them and asked them to meet then and explained to them what we proposed to do, and arranged for them to meet with me the next morning, to meet at the courthouse rather than any parade of students and parents walking down the streets, and that sort of thing—that was [fol. 129] all the Conference—and we went to the superintendent's office.

Q. Now, you had a meeting on a Friday night?

A. That is true.

Q. And, of course, the parents knew you were coming I suppose?

A. I had contacted them.

Q. You went by appointment?

A. Yes.

Q. And a large number of parents were there on that particular occasion?

A. I think all of the plaintiffs were there. All of the plaintiffs were there. I am reasonably certain, and there were other parents who wanted to get in the case.

Q. Then you had another meeting the next morning?

A. At the superintendent's office.

Q. Did you have any other?

A. Yes. Well, in the meantime the school board in Warren County had changed its mind about enrolling them, and the Governor had issued his proclamation, or what-not, and they were refused at that time. And then I carried them back over to the church and explained to them what had occurred, and I left to rush to Harrisonburg for the entry of the order in the Charlottesville case.

Q. Now, at that meeting in the church on Saturday morning, you didn't admonish them to do any particular thing one way or another, did you? Or did you?

A. Oh, I advised them to keep the children off the streets, advised them not to let people get them involved in any brawls, or anything, not to get disturbed by remarks made by people, or anything of that sort, yes.

Q. When did you meet with the plaintiffs again?

A. At Harrisonburg on a motion for further relief, I have forgotten the date.

Q. Did you have any conference with them other than the usual one you have with clients?

A. No.

Q. Did you have most of the plaintiffs there at Harrisonburg?

A. I had a goodly number. No, they all weren't there.

Q. Did you have any meeting with them other than at the court itself?

A. Well, we met in the juryroom. I mean I had a private discussion with them before the hearing.

[fol. 130] Q. Before the hearing?

A. And after the hearing.

Q. What was the nature of the discussion after the hearing?

A. I advised them with respect to what had transpired, and what the implications of it were, and as far as I could at that time what we proposed to take as future steps, and that sort of thing.

Q. And when did you next meet with the plaintiffs?

A. I haven't met with them since.

Q. You haven't had occasion to go up there and see them at all except on the occasions mentioned?

A. No, I haven't been to Front Royal since we carried the children.

Q. Well, have you met with the plaintiffs in any way?

A. I say, except on the occasion at Harrisonburg.

Q. And other than the occasions you have enumerated you haven't met with them at all?

A. Well, it seems to me that on some other occasion of some hearing several of them came down. A committee, say, came down to Harrisonburg. I don't remember the exact date, but anyway I haven't met with the plaintiffs as a group since presenting them to the school board.

Q. Now, what other lawyers were associated with you in that case?

A. Mr. Robinson and Mr. Tucker.

Q. Which Tucker?



A. Otto Tucker.

Q. He is the one from the northern part of the state?

A. I am sorry, S. T. Tucker.

Q. And why was he brought into it from Emporia?

A. Well, we were working on matters at that time.

There were some ideas that I had, and I got him to do some work on them, and that was the reason for it.

Q. That was the second occasion now?

A. That is right.

Q. Did you have any difficulty, or did at any time any of the plaintiffs in the Warren case indicate a desire to withdraw as plaintiffs?

A. No, sir.

Q. You never heard of any such instance as that?

A. Not of any plaintiffs, no, sir. Now, may we get straightened out with this? The first step taken, of course, was to file a petition with the school board. After that petition was filed—and I couldn't know whether it was before the school board acted or—I don't recall right at this minute whether it was before the school board applied or after—but at some period between the time we filed a petition for the school board and the time the suit was instituted, two of the parents requested that their names be withdrawn, and when the suit was filed, their names were withdrawn—I mean, no effort was made in their behalf.

Q. No effort was made in their behalf in the court?

A. That is right. It was too late to do anything; the petition was already filed.

Q. Did you urge them to remain as petitioners?

A. No, sir.

Q. Did anyone else, as far as your know, urge that they stay on as petitioners?

A. Not as far as I know. As a matter of fact, one of the husbands, father, rather, of the children, asked that his child's name be withdrawn. On the occasion when I was in Front Royal after the granting of the temporary injunction when we were making the application to the school board, the mother of the boy and the boy himself, the boy himself and his mother, came up and asked me to represent them. I

told them that if they got together, the family unit, about it, I would be interested in including them, but I thought they ought to get together about it, but I left it up to them. What they have done I don't know.

But I can say this, that we have never put forth any effort to keep somebody in the case that wanted to get out of it.

Q. And that goes for all cases?

A. Yes, that goes for all cases.

Q. When you say "we"—

A. I was talking about the attorneys, so far as I know.

Q. You don't know of any case of anybody on the legal staff that tried to keep somebody in the case when they wanted to get out?

A. No, sir.

Q. And I suppose that observation would apply with equal force to the officers of the Conference of branches?

A. I assume so, I can't imagine any—

Q. Well, you know nothing to the contrary?

A. I know nothing to the contrary.

Q. Mr. Hill, Mr. Banks has testified as to the method of handling fees and expenses, and I believe you did up to, prior to September of last year. I take it that all of those [fol. 132] bills from other lawyers associated with the staff come to you, and then you pass on those bills and send them for payment. That is a correct procedure, is it not?

A. Yes, sir.

Q. And that is true of bills for services for yourself and your partners as well?

A. Well, put it this way. I actually have no partner in a sense that I don't voluntarily submit a fee, but my bills are passed on by members of the staff, too—the members of the staff pass on the bills.

Q. Now, I had understood that you as chairman pass on the bills?

A. I do, yes, sir.

Q. So that you pass on all bills, yours, your partner's or anybody else's?

A. That is right.

Q. And when you O.K. them they go on then to whom?

A. To the president.

Q. And if the president O.K.'s them, they go to the treasurer for payment?

A. That is right.

Q. And are paid?

A. That is right.

Q. Have you known of any case at all in which the president refused to approve a bill that you had approved?

A. No, sir.

Q. Mr. Hill, I have a photostat, three pages, of a document which is headed "Exhibit Hill, B-17, September 13, 1957", and I pass this on to you, and ask you whether or not you are familiar with it, and whether that is a photostat of the original document?

A. Put it this way, Mr. Mays. The only thing I can say about it is that it appears to be a photostat of some material that was submitted to the Committee on Offenses Against Administration of Justice or the Thompson Committee. I don't know which, in pursuance to a subpoena, and it was delivered by me. Now, the reason I am saying that is because I know the exhibits to the Boatwright Committee were labeled such as this is labeled.

Q. Now, to clarify the thing for this present record, when you refer to the Boatwright Committee and the Thompson Committee, were they named after the chairman of two committees appointed by our General Assembly two years ago?

A. That is true.

[fol. 133] Q. Two years ago?

A. Yes.

Q. Well, you think this is an accurate copy of the document you supplied at that time?

A. I would think so, yes, sir.

Q. And do you know to whom these were sent?

A. Let me read it and see.

Q. Take your time. I don't want to hurry you through it.

The Court: Suppose we take about a five-minute recess.

(Recess.)

By Mr. Mays:

Q. Mr. Hill, have you been able during the recess to identify the document which I showed you?

A. As I say, Mr. Mays, I see Mrs. Pole's initials up there. I know that I presented certain evidence to the Boatwright Committee in response to a subpoena, and I know that it was labeled such as this is labeled "Exhibit Hill", and so on. And based on that, and the fact that it deals with N.A.A.C.P. activities, I assume it is all right. Now, there is some writing in, whether that was on the exhibit as submitted or not I don't know. I can't read it in the first place.

Q. I can't either. You identify the typewritten part as accurate, but so far as what is put in by pen is concerned, you do not?

A. I say, I assume it is accurate.

Q. You have no reason to think it is not?

A. I say, I assume it is accurate.

Q. Do you remember the occasion for which this is prepared?

A. No, sir. I am certain there must have been some kind—I really don't know—it appears to be a report of some kind.

Q. And a report that you made?

A. That I made?

Q. Yes. Or who made it?

A. I don't know, I imagine Mr. Banks made it, or somebody out of his office. No, sir, I have no personal knowledge about it at all, other than what I have stated. I mean, in other words, this didn't come—this wasn't labeled "Hill Exhibit" because it has something that I furnished, this was labeled "Hill Exhibit" merely because I was the messenger, so to speak, that carried the material from the State Conference to the Boatwright Committee.

[fol. 134] - Mr. Mays: Your Honor, the witness has not been able to identify the document further than that, and I, of course, cannot offer it in evidence.

Since I have examined the witness on it I should like to mark it for identification so that we may proceed further with another witness. The witness has testified to it, and I will probably have it in through another witness.

The Court: Defendants' Exhibit D-2.

(The document was marked Defendants' Exhibit D-2 for identification.)

The Court: Gentlemen, I have just received a message from my secretary, and the reports that Mr. Banks called in about. He called a few moments ago and stated that he didn't think he would be able to get together the information requested by counsel this afternoon, but that he would call in again shortly before five and advise us positively.

By Mr. Mays:

Q. Mr. Hill, there was introduced, you may recall, in the Federal Court in September of last year a copy of a letter from you to Mr. Walkley Johnson, Clerk, dated October 7, 1957, in which you enclose a document which counsel had asked you to produce. And that document was a memorandum which I will describe by this notation at the top:

"In response to the question of Mr. Gravatt, transcript page 54, we submit herewith excerpt from the minutes of the Executive Board of the Virginia State Conference of N.A.A.C.P. branches, February 4, 1951, fixing fees for the employment and compensation of attorneys".

Of course, that was handed in after you had testified in the case. I notice that in the last paragraph—would you like to refresh your memory—

A. Yes, sir.

Q. I notice in the last paragraph it is stated:

"The Conference agreed to pay \$60 per diem to attorneys so long as such attorneys adhere strictly to N.A.A.C.P. policy."

That was adopted at this particular meeting of the Conference, as I understand it. Has there been any change of policy since that time as to per diem pay?

A. That was adopted at the board meeting. No, sir, they [fol. 135] still pay the same rate of compensation now as they paid as of that time, which was in 1951.

Q. And is the policy still the same, that they get paid as long as they adhere strictly to the N.A.A.C.P. policy?

A. Well, there was quite a bit of discussion at that particular board meeting as to whether or not fees should be

handled on an equalization basis, inasmuch as an attack had been made on segregation per se, whether or not the Conference should undertake to compensate. And as a result of that discussion, that action was taken, yes, sir.

Q. Well, as you understand it then, as I think it bears out, the Conference would not pay the lawyers unless they followed N.A.A.C.P. policy?

A. That is true.

Q. And, of course, the policy, the main policy was to go for desegregation in the schools?

A. Well, that is one of the policies.

Q. But insofar as that particular segment of law is concerned, that is definitely the policy, isn't it.

A. There isn't any question about it.

Q. So that in those cases, if the plaintiffs decided on some other courses of action, of course counsel could not follow the plaintiff's direction and expect compensation from the Conference?

A. Not and expect compensation from the Conference no.

Q. And as matter of fact, in every instance they have gone along with the direction of the Conference, haven't they, so as to get the \$60 per diem, or at any rate have always gone along with the policy of the Conference?

A. Well, I would say that the plaintiffs—well, the Conference had never undertaken to sponsor any case in which the plaintiffs at the outset were not seeking to establish their rights by the elimination of segregation.

Q. I think you have answered me. I do notice in the second paragraph of that document which you sent to Mr. Johnson, the clerk, and I quote from the minutes of the meeting:

"Mr. Hill pointed out how each case has helped our cause, and then he made the following recommendations".

What was meant by that observation, Mr. Hill?

This might refresh your recollection.

[fol. 136] (Handing a document to the witness.)

A. Well, as best I can recall right now, the Chance case—

Q. What case?

A. Chance—it was a case against the Atlantic Coastline Railroad for forcing passengers—as a matter of fact, the



passenger refused to move and they took him off down in Emporia and arrested him—that established the principle the same as the Morgan case that where a person is in interstate commerce they could not require him to change his seat in compliance with any regulations of the railroads for the segregation of passengers.

These other cases—I don't particularly recall right now what, if any, principle of law was established—I mean, I know that no principle was established in the Martinsville case— it was just a general revulsion at the mass execution of some people in a particular case that got us involved in that—but as I say, the other two cases I don't recall at this time. But since you have submitted this memorandum to me, I would like to call attention to one item in it which is labeled "Subsection A," that was one of recommendations on that particular date, that greater emphasis be placed on activities of a non-legal nature by our member branches.

In other words, I know that at that time, but not only at that time, but subsequent times, I have urged people to do things that would achieve their constitutional rights without resort to court, to court action.

Q. Well, that is not in response to my question, but I don't mind the observation.

You refer to the Martinsville case as a revulsion of people and the execution of seven people. I take it to mean they should have drawn straws as to which one should be executed?

A. No, I didn't mean that.

Mr. Mays: That is all.

[fol. 137] JAMES W. HARRIS, was called as a witness and, have been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address?

A. James W. Harris, 618—33rd Street, Newport News, Virginia.

Q. What is your occupation?

A. Brakeman, railroad brakeman.

Q. Were you a plaintiff in the Newport News segregation suit that was brought in 1956?

A. That is right.

Q. Who were the attorneys that represented you in that suit?

A. Thompson.

Q. Is he the only one?

A. Philip Walker.

Q. They are the only two?

A. Yes.

Q. Did you sign a written authorization for them to represent you?

A. Did I sign one? No.

Q. You just told them verbally that you wanted to be represented by them?

A. Yes.

Q. Did you authorize them to employ additional counsel?

A. No.

Q. You did not authorize your attorneys to employ additional counsel?

A. No.

Q. Do you own any real estate in the City of Newport News?

A. I am buying.

Q. Buying a home?

A. A home.

Q. What was your income for the year 1956?

A. About \$5,000.

Q. Approximately \$5,000?

A. Yes.

Q. Is your wife employed?

A. Yes.

Q. Where does she work?

A. She works in the Newport News Shipbuilding Dry [fol. 138] Dock Company, she works for the government.

Q. Approximately what was her income?

A. About \$3500.

Mr. Wickham: We have no further questions.

Cross examination.

By Mr. Hill:

Q. Mr. Harris, you met with Mr. Thompson and Mr. Walker at various times, did you not?

A. That is right.

Q. Did you ever sign a sheet of paper?

A. Yes, I did.

Q. Now, when you were asked, did you sign an authorization, what did you understand by authorization?

A. Repeat your question, again.

Q. Counsel asked you, did you sign an authorization. What did you understand him to mean when he said an authorization?

A. He asked me, did I sign an authorization for them to represent me.

Q. Yes.

A. I thought maybe, did I sign a paper saying, did I want want them to represent me.

Q. Did you sign such a paper?

A. Yes, I did.

Q. Do you remember the terms of the paper?

A. No, I can't recall exactly.

Q. You had a place for the attorney's name inserted, or it was already written in, isn't that true?

A. Yes.

Q. And do you recall whether or not this paper also said that such attorney might associate other attorneys with him?

A. I don't know.

Mr. Wickham: I object to that question, Your Honor.

The Court: The witness has already answered before the objection was made. He said he doesn't recall.

By Mr. Hill:

Q. But you do recall signing a paper?

A. Yes.

[fol. 139] Q. One other question. Did you attend the hearing in Newport News?

A. No, I didn't.

Q. Did you have any objection to your attorney securing other lawyers?

A. No.

Mr. Hill: That is all.

Redirect examination:

By Mr. Wickham:

Q. Mr. Harris, what was your understanding with your attorneys concerning the payment of expenses and attorney's fees?

A. Repeat your question again, now.

Q. What was your arrangement with your attorneys concerning the payment of expenses and attorney's fees in the lawsuit?

A. Well, I decided that—there was more than one of us signed it for them to represent us, and I said, whatever the cost was I would pay my share.

Q. Did you know that the N.A.A.C.P. was going to sponsor that particular suit?

A. No, I didn't.

Q. And you didn't look to the N.A.A.C.P. or anyone else to pay any part of the expenses or the attorney's fees in that suit?

A. No.

Q. Have you paid any attorney's fees to date?

A. No, I haven't.

Q. Has a bill been submitted to you?

A. No, not yet.

Q. And this suit was started when?

A. 1956.

Q. 1956?

A. Yes.

Mr. Wickham: No further questions.

The Court: Do you want this witness excused?

Mr. Robinson: Your Honor, we would like to have this witness held for possible further cross-examination at a later time today.

The Court: Who summoned this witness here?

Mr. Wickham: We did, Your Honor.

The Court: Why are we holding the witness?

[fol. 140]. Why is it that you can't cross-examine him now?

Mr. Robinson: There was testimony given by this witness both on direct and cross-examination concerning an authorization. We have asked that that authorization be gotten from Newport News and Richmond. We expect to have it before the end of the day, and we would like this witness before leaving the case to identify the authorization with a view to possibly putting that authorization in.

Mr. Wickham: Is that the only reason for holding this witness?

Mr. Robinson: Yes.

Mr. Wickham: If Your Honor please, we would like to suggest, if this witness is going to be recalled by the complainants, that his examination be limited only to the question concerning the written authorization.

The Court: Well, I will keep that motion under advisement to see if nothing else develops in the case. I won't rule on it at this time.

Mr. Harris, you can step down from the witness stand. You will have to remain outside. Do not discuss with any of the other witnesses the questions you were asked or the answers you gave.

(Witness temporarily excused.)

The Court: Next witness.

Mr. Wickham: Ernest C. Downing.

ERNEST C. DOWNING, was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Dr. E. C. Downing, 1229—27th Street, Newport News.

Q. What is your occupation?

A. Physician and surgeon.

Q. Doctor, were your children plaintiffs in the Newport News segregation suit that was brought in 1956?

A. Yes.

Q. You were not, is that right?

A. I?

[fol. 141] Q. Were you actually a plaintiff, or was your wife a plaintiff?

A. My wife.

Q. And your children?

A. Yes.

Q. Who were your attorneys?

A. Lawyer Thompson and his associates.

Q. Who are his associates?

A. Lawyer Walker.

Q. And that is all, sir?

A. That is all, Lawyer Thompson and his staff.

Q. You don't know the members of his staff?

A. I know Lawyer Walker.

Q. What arrangements did you and your attorney make as to the payment of expenses and attorneys' fees?

A. Well, there weren't any definite arrangements made. They were to take the case, and so far as any financial arrangements, they were to be made after it was brought to court and decided on.

Q. Has a bill been rendered to this date?

A. No bill has been rendered.

Q. Doctor, I find from the land books of Newport News that you own three parcels of land with the appraised value of thirty thousand eight hundred and sixty-odd dollars, is that right?

A. That is about correct.

Q. Are there any liens on those parcels?

A. No.

Q. Is it free and clear?

A. Free and clear.

Q. What was your income in 1956?

A. I don't recall just what it was.

Mr. Hill: Your Honor, I don't see the pertinency of asking about his personal business. This is not supposed to be



any prosecution under these statutes, as to whether or not the N.A.A.C.P. is violating these statutes. It certainly doesn't necessitate the inquiry into all these people's personal affairs. It is just for the persecution of these people.

The Court: Mr. Wickham, do you wish to be heard?

Mr. Wickham: If Your Honor please, Chapter 36, which is involved in this litigation, provides for the exemption of legal aid societies, and under any deviation of a legal aid society, you must find that the particular client is unable to pay for the litigation, and, therefore, we feel that this line [fol. 142.] of questioning is very pertinent to the inquiry before the Court.

The Court: Objection overruled.

Mr. Hill: May I say one other thing, Your Honor.

We have not contended that we have complied with legal aid society requirements of this statute. We haven't asked for any approval of the Bar Association and all such things as required by the statute. And so that still affords no basis for the type of examination these witnesses are being subjected to.

The Court: The Court understands the history of these cases. The first one is whether or not the activities of the N.A.A.C.P. or the Virginia Conference of it or the Defense Fund or any of its member branches and sections have violated any of these sections of the Code.

Mr. Hill: That is right.

The Court: And consequently until I know what the activities are and in what manner the employment was made it seems to me the Court would not have sufficient information to rule on.

Mr. Hill: There is no denying the fact that we do the thing that the statutes say you can't do. We don't contend that we have been conforming with this statute. We admit that the State Conference has been sponsoring all this litigation and paying the attorney's fees. There is no denial of that. They are trying to prove something that isn't denied, and to prove it they are prying into a lot of people's personal affairs. If we were denying that we were doing a lot of these things, I would submit that these questions would be pertinent. But we admit that we paid the expenses for these cases. We paid the expenses of the attorneys. We paid the expenses. There is no denial of it. The only ques-

tion is whether or not we can do these things, whether this statute in prohibiting us from doing it, attempting to prohibit us from doing it, violates the constitutional rights of the national office and the State Conference and local branches.

Mr. Wickham: If Your Honor please, it is not a question of whether or not the plaintiffs are doing it or not. It is a question of whether or not the particular plaintiffs can afford to pay or not afford to pay.

Mr. Carter: That is not the issue in this litigation, Your Honor. The only question in this litigation is as to the construction of these statutes. There is no allegation made here that either of these organizations has sought the approval of [fol. 143] the Virginia Bar Association, which is the only issue of weighing the statute, that a legal aid society is exempted from the provisions of this statute.

The question is whether or not the association and the fund can do the things it has done, whether or not it comes within the statute, whether or not the statute is constitutional or can be enforced, or reaches our activities.

The Court: All right. The Court will adhere to the same ruling.

Go ahead with the examination.

Mr. Hill: We note an exception, Your Honor.

Mr. Robinson: If your Honor please, the complainant that I represent will also note an exception.

By Mr. Wickham: -

Q. Will you estimate your income for 1956?

A. Well, I don't know the exact amount it was because my income fluctuates, and I can't give an exact amount. It is exact in the U. S. Internal Revenue return.

Q. Can you estimate your income for last year?

A. I would say it was perhaps \$12 or \$16 thousand, or something like that.

Q. Would there be any substantial change from the previous year?

A. Well, it wouldn't be any substantial change.

Q. Do you expect to receive a bill for services rendered from your attorneys in this Newport News case?

A. What was that question?

Q. I say, do you expect to receive a bill for services rendered by your attorneys in the Newport News case?

A. That was the understanding.

Mr. Wickham: That was your understanding.

No further questions.

The Court: Do you want him excused?

Mr. Hill: Just one moment, Doctor.

Cross examination.

By Mr. Hill:

Q. Doctor, you were not a plaintiff in that case?

A. Just what do you mean by that?

[fol. 144] Q. Was your name listed as one of the plaintiffs, or was it just your wife?

A. My wife.

Q. Who played the leading role in this thing so far as your family is concerned?

A. My wife.

Mr. Hill: That is all.

The Court: Is there any objection to his being excused now?

Mr. Wickham: No, sir.

The Court: All right, you are excused. You may go back to your community.

(Witness excused.)

Mr. Wickham: Louis Thompson.

LOUIS THOMPSON, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Louis Thompson, 829—21st Street, Newport News, Virginia.

Q. What is your occupation?

A. A mechanic in the shipyard.

Q. Were you a plaintiff in the suit that was brought in Newport News in 1956 concerning the integration of the schools?

A. Yes.

Q. And who are your attorneys?

A. Phillip Walker, W. Hale Thompson.

Q. Did you authorize them personally to represent you in this suit?

A. Not personally, but I did.

Q. What do you mean by not personally? Who authorized them?

A. I did.

Q. How did you do it? You said you didn't do it personally. How did you do it?

A. Well, suppose I say I did it personally.

Q. Now, is that going to be your story now, that you did it personally?

[fol. 145] A. Yes, I did personally sign my name for them to represent me.

Q. Did you have any personal contact with the attorneys?

A. Yes..

Q. When was the first time you had that personal contact?

A. I don't remember what day it was.

Q. Where was the contact first made?

A. In the City of Newport News.

Q. Where in the City of Newport News?

A. I don't really remember that, it might have been in the office or the street or meeting. I don't remember.

Q. What type of meeting would it have been if it was at a meeting?

A. I wouldn't know particularly. I do remember in their office. I remember that distinctly.

Q. You met with them in their office?

A. That is right.

Q. Did you also meet them at a N.A.A.C.P. meeting held in Newport News?

A. Oh, I have met with them several times and others.

Q. At the N.A.A.C.P. meeting?

A. Many times.

Q. Is that when you personally authorized them to represent you?

A. No.

Q. What was your income in 1956?

Mr. Hill: We raise the same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. What was your income in 1956?

A. Right offhand, let's see, I don't know. I am a mechanic, and, of course, I maybe—what do you mean, total amount of income? —

Q. That is correct.

A. I can't just say right offhand.

Q. Was it over \$5,000?

A. I imagine it was around \$5,000.

Q. You think it was around \$5,000?

A. I think it was. That sounds pretty good.

Q. Do you own any real estate in the City of Newport News?

[fol. 146] A. Yes, sir.

Q. The land books indicate you own three parcels of land in the City of Newport News, is that correct?

A. I guess so, if it shows that, must do.

Q. Don't you know?

A. Well, I do—it could be more, or less, but I know that I own some real estate.

Q. Do you know what the value of your real estate is?

A. Right offhand, I don't.

Q. Do you have any liens on your real estate, any mortgages? Do you owe any money on your real estate?

A. Yes, there are some liens against it.

Q. How much?

A. That is another question I can't answer you accurately. I know there are some liens, just how much I can't answer.

Q. Roughly how much?

A. Roughly, a couple of thousand dollars or maybe more.

Q. But you don't have any idea of what the appraised value of your real estate is?

A. No, I really don't know just what the appraised value is.

Q. Would you say \$15,000?

A. To me I would say that, yes.

Q. I mean, would you sell your real estate for \$15,000?

A. I most certainly wouldn't.

Q. You would not?

A. I would not.

Q. How much would you sell it for?

A. I wouldn't sell it.

Q. How much do you think it would be worth to somebody else?

A. Worth to them? I don't know.

Q. If you had to sell it, what would you sell it for?

A. Well, now, if I had to sell it, I don't know what I would sell it for.

Q. \$15,000?

A. I am sure not.

Q. More than \$15,000?

A. Well, I wouldn't want to sell it, but if I had to sell it I would be asking more than that for it.

Q. Did you have an arrangement with your attorneys concerning the payment of legal fees and expenses in the Newport News segregation case?

A. Well, they haven't sent me a bill or anything like that. [fol. 147] Q. Do you expect to receive a bill?

A. Well, I hope so. I usually receive bills for all attorneys' fees.

Q. You didn't know that the N.A.A.C.P. was going to pay the expenses and attorneys' fees in this litigation?

Mr. Robinson: If Your Honor please, I have been rather patient on this matter of leading. This is Mr. Wickham's witness, and I think he has gone right far in leading this witness so far.

The Court: Will you read the last question?

(Question read.)

The Court: I will sustain the objection to the form of the question.



By Mr. Wickham:

Q. Did you know whether or not the N.A.A.C.P. was going to pay the expenses and legal fees in the case to which we are referring?

A. Did I know?

Q. Yes.

A. No, I don't know that.

Q. You have no information concerning that?

A. No, I really don't.

Mr. Wickham: No more questions.

The Court: Any cross-examination?

Mr. Hill: No questions.

Mr. Wickham: He may be excused as far as the defendants are concerned.

The Court: All right, Mr. Thompson, you are excused. You are free to leave and go home. If you remain outside, don't discuss with any other witnesses what questions you were asked and what answers you gave.

The Witness: Thank you.

(Witness excused.)

Mr. Wickham: I will call David W. Morris.

---

DAVID W. MORRIS, was called as a witness and, after being first duly sworn, was examined and testified as follows:

[fol. 148] Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. My name is David W. Morris. I live at 1818 Marshall Ave., Newport News, Virginia.

Q. Did you have a child or children that were plaintiffs in the Newport News segregation case that was brought in 1956?

A. I did.

Q. What is your occupation?

A. I am a restaurant and hotel keeper.

Q. Does your wife help you in this business?

A. That is right.

Q. The land books of the City of Newport News reveal that you own two parcels of land with the appraised value of something over \$53,000, is that correct?

A. I imagine it is about correct. I couldn't say the exact figure.

Q. You say that it would be approximately correct?

A. Well, I couldn't tell you that.

Q. Well, what is the value of the property, in your opinion?

A. Well, I am unable to tell you that.

Q. Well, would you sell it for \$50,000?

A. No, I wouldn't.

Q. You would sell it for something more than \$50,000?

A. Well, I would get as much as I could.

Q. And you think you would get something more than \$50,000 for it?

A. Well, I don't know.

Q. Who are your attorneys in the Newport News segregation case, or the attorneys of your children?

A. Well, Mr. Thompson has been my attorney ever since I have been in business since 1938.

Q. Well, you actually weren't a plaintiff in the Newport News suit, were you? Wasn't it your wife or both of you?

A. My wife.

Q. And children?

A. I am subpoenaed here.

Q. But actually your wife and children were the plaintiffs in the Newport News case, you weren't actually a party to that suit? Or were you? I don't know.

A. I just don't quite understand what you mean there.

Q. I mean, were you a plaintiff in the Newport News segregation suit that was brought in 1956? As I recall, [fol. 149] only your wife and children were actually named in the lawsuit, is that correct?

A. Well, I am with my wife in anything she attempts to do. I will go along with her, whatever she does.

Q. Can you estimate what your income was in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: No, I couldn't.

By Mr. Wickham:

Q. Can you estimate what your income was in 1957?

Mr. Hill: Your Honor, I would also like to make a further objection in this particular instance, because it has not been established that this man was a party to the suit.

Mr. Wickham: Your Honor, the children were parties to the suit, and I am sure the children have a right to look to the parents for the payment of the attorney's fees.

The Court: Objection overruled.

Mr. Hill: I note an exception.

Mr. Robinson: To save the frequent interruption of the examination, I wonder if it could be understood that each plaintiff objects to testimony in response to questions of the type that Mr. Wickham has just asked, and we note an exception to the ruling by the Court on those objections. Or would the Court prefer us to make the objection each time?

The Court: Suppose, to keep the record straight, you just say "same objection" to each question, and the Court will say "same ruling".

Mr. Robinson: All right. May I have this understanding, that the objection made by each complainant and the exception take from any ruling on that objection would apply equally to both complainants, so it would save the necessity for each complainant making the same objection and obtaining the same exception?

The Court: Understood.

By Mr. Wickham:

Q. Do you have any liens on the real estate that you own?

A. I certainly do.

Q. From what amounts?

A. Well, I can't say definitely. I imagine about in the neighborhood of \$20,000, approximately.

[fol. 150] Q. Now, did you make any arrangements with

your attorneys concerning the payment of expenses and legal fees in the segregation case?

A. No, I have not.

Q. Do you expect to pay your share of expenses and legal fees?

A. Well, if there is any fee attached I would be expected to, but I haven't been billed for such.

Q. You don't expect to be billed?

A. I don't know, I couldn't answer that.

Q. You never discussed that with your attorneys?

A. No.

Q. Can you tell us whether or not the N.A.A.C.P. is paying the expenses, your share of the expenses and legal fees in this case?

A. How was that, now.

Q. Could you tell us whether or not the N.A.A.C.P. is paying your share of the expenses and legal fees in the Newport News case?

A. Not that I know of; I couldn't answer that question.

Mr. Wickham: No further questions.

The Court: Cross-examination?

Mr. Hill: No.

The Court: You are now free to leave, Mr. Morris. You are excused for the day. If you want to return to Newport News, you may do so.

The Witness: Thank you.

The Court: Do not discuss the case with any witnesses on the way out as to questions you were asked or the answers you gave.

The Witness: Thank you.

(Witness excused.)

The Court: Next witness?

Mr. Wickham: Thomas W. Selden.

THOMAS W. SELDEN, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?  
[fol. 151] A. Thomas W. Selden, 3100 Madison Avenue, Newport News.

Q. Will you state your occupation?

A. Physician.

Q. Were you a plaintiff—are you a plaintiff in the Newport News segregation case that was started in 1956?

A. Yes.

Q. Who were your attorneys?

A. Lawyer Hale Thompson and Lawyer Phillip Walker.

Q. Have you made any arrangements with them as far as the payment of expenses and attorneys fees?

A. No, I haven't.

Q. Do you expect to make any arrangements with them?

A. No.

Q. Who do you expect to pay the expenses and attorneys' fees in this case?

A. The N.A.A.C.P.

Q. Doctor, the land books of Newport News show that you own two parcels of land at an appraised value of somewhat over \$21,000, is that correct?

A. At one time it was correct.

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. In 1956, wasn't that correct, at the time you brought this lawsuit?

A. 1955 or 1956, I am not certain which.

Q. Since then you have sold your real estate?

A. No, I had one of the dwellings to burn down in December of last year.

Q. What was your income in 1956?

Mr. Hill: As I stated, Your Honor, the objections go to all this line of testimony.

The Witness: I don't remember the exact figure.

By Mr. Wickham:

Q. Estimate what your income was in 1956?

A. I would say around \$19,000.

Q. Around \$19,000.

No further questions.

[fol. 152]—The Court: Any cross-examination?

Mr. Hill: No, sir.

The Court: All right.

Dr. Selden, you are now excused by the Court. You are free to return to Newport News if you care to. Please do not discuss with any witnesses on the way out any questions you were asked or any answers you gave.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Marie E. Patterson.

MARIE E. PATTERSON, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Marie E. Patterson, 751—26th Street, Newport News, Virginia.

Q. Were you a plaintiff in the Newport News segregation suit brought in-1956?

A. Yes.

Q. What is your occupation?



A. Housewife, and then I assist my husband. He is self-employed.

Q. What is his business?

A. Laundry business. We have a small laundry.

Q. You mean your husband owns this laundry and operates it also?

A. Yes, he does.

Q. Who were your attorneys in the lawsuit that was brought in Newport News in 1956?

A. Lawyer Thompson.

Q. Did you have any other lawyers?

A. Do you mean likely, just likely?

Q. Well, likely or otherwise.

A. Well, we gave him the right to get anyone to help him whom he thought would be suitable for the case.

Q. Do you know who he got?

A. Phillip Walker.

[fol. 153] Q. Did he get anyone else?

A. I am not too familiar with the others.

Q. Did he inform you who he was going to get?

A. I asked him—this was all my idea. He didn't tell me anything at all. You see, Mr. Thompson is my husband's legal adviser, and naturally when something came up about the schools, having had contact with him, I thought about him first of all, and knowing that he was a very capable person, I left the rest of it to him.

Q. What arrangements did you make with him concerning the payment of expenses and legal fees?

A. Arrangements? As far as I know, no arrangements have been made for any legal fees.

Q. Who was supposed to pay the expenses and legal fees?

A. I didn't discuss that with him, it was just understood that he would handle the case for us, because he had done this sort of work before, and to really be frank with you, I don't see how Mr. Thompson is making it, because as far as I know, he hasn't received anything.

Q. You don't expect to pay him anything?

A. Well, we can't ever tell what may happen in the future. If the case goes on long enough and his situation gets bad enough, I am hoping that we will have to give him some-

thing: But as far as I know now, I don't expect to pay him any special fee.

Q. Well, suppose the suit stopped right this minute, would you expect to pay anything up to date?

A. If the suit stopped right this minute, I would first like to know why it stopped, because as long as there is segregation, there will be a necessity for a suit, and if the suit stops, then my first problem would be to find out why it stopped, and then I would look to God for the money or whatever would be necessary to take care of the other steps in the case.

Q. Well, now, will you answer my question, please? I asked you if the lawsuit in Newport News was completed today, would you expect to pay your lawyers' attorneys' fees and expenses incurred in that suit?

A. No.

Q. Do you know whether or not the N.A.A.C.P. has stated that they would pay the expenses and attorneys' fees?

A. No.

Q. You have no recollection on that at all?

A. No. We haven't talked about money too much.

Q. Did you and your husband file a joint tax return in 1956?

[fol. 154] A. Yes.

Q. Can you estimate the income, your husband's income and your income for that year?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Witness: For the year 1956?

By Mr. Wickham:

Q. Yes.

A. That would be very difficult for me to do, and we have a bookkeeper, and he works very close with my husband.

Q. How about 1957?

A. I am not too familiar with any of the financial statements that have been made.

Q. Don't you file a joint return, you stated?

A. My husband and I have been married 21 years, and he seems to be a pretty reliable fellow, and I just thought I would go along with that he does.

Q. I say, did you file a joint return?

A. We always file joint returns.

Q. And you signed it?

A. Yes.

Q. And you don't know what you signed?

A. No.

Q. And you don't know—

A. I know it must be accurate, because my children are still having clothes, and I am still eating, and we are still living in the same home, so he must be making something, so I don't pay too much attention to that.

Q. Can you estimate approximately what he is making?

A. Let me see now. He allots himself so much a week. He allots himself between \$50 and \$60 a week for the family, and then I guess that is about as close as I can come to it. You can sort of figure out from that, maybe.

Q. You don't have any idea what your husband makes?

A. Well, I would like to be perfectly frank with you, and as I said before, I am not so familiar with that side of the business, but if you would rather that I make up a figure—I [fol. 155] will have to try to think of one, I guess—suppose we say—I would have to look on the income tax statement. I don't think it would be fair for your records if I give you a wrong figure. You are trying to have exact records, aren't you?

Q. No, just an estimate of what your husband and you make. You work with your husband in this business, do you not?

A. I go down occasionally and help with the supervisory part of the work, but I don't do any office work.

Q. And you filed a joint return with your husband?

A. Yes.

Q. And you signed the return?

A. Oh, yes.

Q. And you have no idea what the return said, or what your husband made?

A. It is in the thousands.

Q. In the thousands?

A. Just say \$15,000.

Q. Would that be within \$2,000 of his income, either way?

A. That would be within \$2,000 either way.

Mr. Wickham: No further questions.

The Court: Any cross?

Mr. Hill: No.

The Court: Mrs. Patterson, you are excused. You may leave. Please don't discuss the case with any witness.

The Witness: Thank you.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Jerry C. Fauntleroy.

---

JERRY C. FAUNTLEROY, was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. Jerry Cornelius Fauntleroy, 3303 Roanoke Avenue, Newport News.

Q. What is your occupation?

A. I am a rigger in the Newport News dry dock.

[fol. 156] Q. Were you a plaintiff in the Newport News segregation suit that was brought in 1956?

A. Yes, I was.

Q. Are you married?

A. Yes, I am.

Q. Does your wife work?

A. Yes, she does.

Q. Who are your attorneys in that litigation?

A. Attorney W. Hale Thompson.

Q. Only Mr. Thompson?

A. And Phillip Walker.

Q. They are the only two representing you?

A. That is right.

Q. Do you know of any other attorneys representing you in that case?

A. No, I can't say definitely. I know I hired those two to represent me, I secured their services for my benefit.

Q. Did you authorize them to secure other attorneys to be associated with them?

A. What?

Q. Did you authorize them to obtain other lawyers to work with them in the case?

A. Oh, yes, to get justice.

Q. I say, did you authorize them?

A. Yes, I did.

Q. What attorneys did you authorize?

A. Any that they saw fit that could help them.

Q. And what arrangements did you make with your attorneys with regard to the payment of legal fees and expenses?

A. Well, I agreed to pay them after the case was brought to a completion, finished, there wasn't no particular—

Q. You have agreed to pay expenses and attorneys' fees, is that correct?

A. That is right.

Q. Do you know whether or not the N. A. A. C. P. has also agreed to pay those expenses and attorneys' fees?

A. No, I can't say definitely on that.

Q. You don't know?

A. Not definitely.

Q. What was the income—your income and the income of your wife for 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

[fol. 157] Mr. Hill: Exception.

The Witness: Do you want me to answer that?

By Mr. Wickham:

Q. Yes.

A. Approximately—I can't say definitely, because I don't have my income tax report with me—but it was approximately \$8,100.

Q. In 1956?

A. That is right.

Mr. Wickham: No further questions.

Cross examination.

By Mr. Hill:

Q. Mr. Fauntleroy, you haven't paid anything to your lawyers, have you?

A. Not yet.

Q. You knew the N. A. A. C. P. was sponsoring the case, did not not?

A. Oh, yes.

Mr. Hill: That is all.

Redirect examination.

By Mr. Wickham:

Q. One further question. You said that you knew the N. A. A. C. P. was sponsoring the case. What do you understand that to mean?

A. Well, for one thing, I know that the N. A. A. C. P. lawyers are just about the best in the world, and naturally I want the best that can be afforded me, for the opportunity I am seeking.

Q. Do you expect to pay the N. A. A. C. P. lawyers?

A. Oh, yes, when they present their bill.

Q. Do you expect them to present their bill?

A. I am expecting my bill to come from the attorney I hired, but that is up to them.

Mr. Wickham: No further questions.

The Court: May this witness be excused?

All right, you are excused. You may leave and return [fol. 158] to Newport News. Please do not discuss the case with any witnesses who have not testified.

(Witness excused.)

Mr. Wickham: James E. Manson.



JAMES E. MANSON, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Please state your name and address.

A. James E. Manson, 3808 Marshall Avenue, Newport News, Virginia.

Q. Were you a plaintiff in the Newport News segregation suit that was brought in 1956?

A. Yes.

Q. What is your occupation?

A. Contractor.

Q. Do you work for yourself?

A. Yes.

Q. Who were your attorneys in the Newport News segregation case?

A. I do not know.

Q. You do not know?

A. No.

Q. How did you come to be a plaintiff in the case?

A. It was a community project.

Q. A community project?

A. Yes.

Q. Who contacted you?

A. Someone in the community.

Q. You don't remember who contacted you?

A. I don't remember.

Q. But you do know that you were a plaintiff in the case?

A. I do.

Q. But you don't know the names of your attorneys?

A. No.

Q. You never had any personal contact with them?

A. I do not know.

{fol. 159} Q. You mean you don't know whether you have had any personal contact with your attorneys or not?

A. No.

Q. Are you a member of the N. A. A. C. P.?

A. I am affiliated with it.

Q. Is that why you became a plaintiff in the case?

A. It was a community project.

Q. Well, how did you first learn about the lawsuit?

A. From the papers, I imagine.

Q. You have had no contact with any attorneys?

A. No.

Q. And who do you expect to pay the expenses of the litigation?

A. The community, I imagine, would pay some of it.

Q. What do you mean by the community, the N. A. A. C. P.?

A. No—the community met, and they discussed it with me, and that is what I meant.

Q. Who in the community, what people are you talking about?

A. Neighbors and friends—I couldn't call the name, because I don't know.

Q. But you just told a person in your community to put your name down, is that right?

A. It was discussed in the community.

Q. You never authorized anybody, though, to represent you?

Mr. Robinson: If Your Honor please, I object to that as leading—I certainly think that last question was particularly leading.

The Court: The objection is sustained as to the form of the question.

By Mr. Wickham:

Q. Did you authorize anyone to bring a lawsuit for you in the City of Newport News?

A. I signed the affidavit.

Q. Well, who brought you that affidavit?

A. The community, neighbor.

Q. A neighbor?

A. Yes.

Q. Do you know the name of that neighbor?

A. I don't.

Q. What was your income in 1956?

[fol. 160] Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Court: You may answer the question.

The Witness: I can't remember that.

By Mr. Wickham:

Q. Do you know what your income was last year?

A. I can't remember.

Q. Do you own any real estate in the City of Newport News?

A. Yes.

Q. How many parcels of real estate do you own in the City of Newport News?

A. I do not know.

Q. Can you estimate the value of the real estate you own in the City of Newport News?

A. I cannot.

Q. The land books in the City of Newport News show that you own five parcels of land, is that correct?

A. Maybe so.

Q. You don't know?

A. Not offhand.

Q. Could it be four parcels of land?

A. I don't know.

Q. Do you own any personal property?

A. I reckon so.

Q. I say, do you own any personal property, answer yes or no.

A. I imagine so.

Q. How many trucks do you own in your business?

A. Four.

Q. Do you own a station wagon?

A. do.

Q. Do you have any income from renting any real estate?

A. Yes.

Q. How much?

A. I do not know.

Q. Can you estimate what your income will be this year?

A. I cannot.

Q. You can't estimate what it was last year?

A. I can't remember.

Q. Would you say that your income was approximately \$60,000?

[fol. 161] Mr. Robinson: If Your Honor please, the witness has been asked more than once just what his income is, and he says he doesn't remember. I don't see any point in pursuing the line of questions that the defendants are pursuing just to try to reach up into the air and get the figure.

The Court: I overrule the objection, Mr. Robinson. He said he couldn't estimate it, and I think the attorney ought to be allowed to come to it generally if he couldn't get it specifically.

I want you to answer the question as near as you can, nobody may know to the exact penny or dollar.

By Mr. Wickham:

Q. Would you say your income was approximately \$60,000 in 1956?

A. I would not, because I can't remember.

Q. Was it within a thousand dollars of that figure?

A. I can't remember.

The Court: Now, Mr. Wickham, I would rule that insofar as estimating this year's income, he can do that. I think when he says that he just can't remember about 1956 and 1957, that probably ends it.

By Mr. Wickham:

Q. Can you estimate what your income will be this year?

A. I imagine about \$4,000, four or five.

Q. Four or five?

A. I imagine.

Q. And you can't remember what it was last year?

A. No, I cannot.

Q. Now, as to your real estate, would you say that the value of your real estate was \$30,000?

A. I have never had it checked.

Q. What would you sell your real estate for?

A. I have never thought about it.

Q. Think about it. If you had to sell it today, what would you sell it for?

Mr. Hill: Your Honor, that question is ridiculous, the man said that he has never thought about selling it. What a person would sell his real estate for would depend on a lot of circumstances. How can he tell that? He might sell it for a hundred thousand dollars if he wanted to.

[fol. 162] Mr. Robinson: Your Honor, what this man might take for his real estate certainly doesn't represent the fair market value of it.

The Court: Well, we are not in a condemnation case, and we are not establishing fair market value as a test, but it is a pretty unusual person who hasn't got an idea of the fair market price of his property.

The Court is going to overrule the objection.

Mr. Hill: Exception.

By Mr. Wickham:

Q. Would you say that the appraised value of your real estate was as much as \$25,000?

A. I would.

Q. As much as \$30,000?

A. I imagine it would be, I would have to figure it up first.

Q. More than thirty?

A. I imagine around thirty.

Mr. Wickham: No further questions.

Cross examination.

By Mr. Hill:

Q. Mr. Manson, did you attend a meeting with some of the other parents at either Mr. Thompson's office or the Presbyterian Church or the Cosmos Inn?

A. No.

Q. Did you attend any meeting with other parents?

A. We met at the Newport News school board.

Q. You met at the Newport News school board?

A. Yes.

Q. Did you attend any meetings other than at the Newport News school board?

A. I have attended meetings, yes.

Q. Back in 1956 or just before this suit was filed, leading up to the filing of this suit?

A. Yes.

Q. At one of those meetings did you sign an authorization?

A. I did.

Q. Authorizing Mr. Thompson and others to represent you?

A. Yes.

Q. Just one other question.

[fol. 163] Have you personally paid any money for attorneys' fees or expenses or anything in this suit?

A. No.

Mr. Wickham: One further question.

Redirect examination.

By Mr. Wickham:

Q. Who was your attorney in the case?

A. I just signed the proclamation. I didn't know who all of them was, I didn't know all the names.

Q. Didn't you know anybody's name?

A. I knew one of them names.

Q. What was his name?

A. Lawyer Thompson.

Q. Did Lawyer Thompson give you the paper to sign?

A. No, he didn't.

Q. And you had no personal contact with Lawyer Thompson?

A. No, a neighbor gave me the paper.

Mr. Wickham: No more questions.

Recross examination.

By Mr. Hill:

Q. Mr. Manson, did I understand you to say you had no personal contact with Mr. Thompson?



A. Yes, I have had personal, sure, I have had personal with him.

Q. And was Mr. Thompson present at this meeting?

A. Yes, he was present at one meeting, but we didn't sign the authorization then.

Q. You didn't sign the authorization then?

A. No.

Q. You didn't discuss this matter at the time?

A. Yes.

Mr. Hill: That is all.

The Court: Any objection to this man being excused?

Mr. Wickham: None, Your Honor.

The Court: All right, Mr. Manson, you are excused. You are free to leave now. You may go back to your work.

[fol. 164] (Witness excused.)

Mr. Wickham: Arthur L. Price.

ARTHUR L. PRICE, was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. Arthur L. Price, Arthur Leonard Price, 3012 Marshall Avenue, Newport News.

Q. Will you state your occupation?

A. I am a machinist, Newport News Shipbuilding Dry Dock.

Q. Are you a plaintiff in the Newport News segregation case that was brought in 1956?

A. Yes.

Q. Are you married?

A. Yes.

Q. Does your wife work?

A. No.

Q. She does not.

Who are your attorneys in that lawsuit?

A. Mr. Thompson, Hale Thompson, and Mr. Phillip Walker.

Q. Did you make any arrangements with them as to the payment of expenses and legal fees?

A. I don't quite understand what you mean, arrangements.

Q. Well, have you discussed with your attorneys who would pay the cost of the lawsuit?

A. Well, in a way, yes.

Q. In what way?

A. Well, I understand that we are to pay for the suit, the complainants.

Q. Have you paid anything to date?

A. Paid anything to date?

Q. Yes.

A. No, I haven't paid anything.

Q. Do you expect to pay something?

A. Oh, yes.

Q. But your attorneys have not billed you anything?

[fol. 165] A. No, they haven't billed anything. I am under the impression that it all comes—under the impression that it all comes under the N. A. A. C. P. of which I am a legal member. I think it comes under that heading.

Q. Well, do you expect the N. A. A. C. P. to pay the expenses?

A. I would think it would.

Q. Because you are a member of the N. A. A. C. P.?

A. I think that is reasonable enough.

Q. What was your income in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. Approximately.

A. Approximately?

Q. Yes.

A. Approximately \$6,000.

Q. The land books of the City of Newport News show that you own some real estate with an appraised value of something over \$12,000, is that correct?

A. I guess so.

Mr. Wickham: No further questions.

Mr. Hill: No questions.

The Court: All right, Mr. Price, you are excused. You are free to go back to Newport News if you wish, but don't discuss the case with any other witnesses.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Harold M. Johnson.

HAROLD M. JOHNSON, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

[fol. 166] A. Harold M. Johnson, 2901 Lexington Street, Arlington, Virginia.

Q. What is your occupation?

A. A physician.

Q. Were you a plaintiff in the Arlington County school segregation suit that was brought in 1956?

A. No, 1957.

Q. You intervened in 1957?

A. 1957; I was not in in 1956.

Q. Who were your attorneys?

A. Mr. Edmund C. Brown was the man whom I engaged to represent me.

Q. Did you have any understanding with him concerning the payment of expenses and legal fees?

A. I did.

Q. What was that understanding?

A. Well, I sent him a check for \$100 at the time that I wrote him a letter asking him to represent me on behalf of my two daughters, who had applied to Washington and Lee High School.

Q. Have you received any further bills, or any bills from him since that time?

A. No, I have not.

Q. Is he still representing you in that case?

A. No.

Q. Who is representing you now?

A. Now, did you say? Well, I don't have a legal counsel now, so far as that goes. I am not in the case any longer. I withdrew in 1958.

Q. You withdrew?

A. When one of my daughters went on to college, and I chose to carry the other daughter on to school where she had been going prior to the time we elected to seek admission to the high school.

Q. When you employed Mr. Brown to represent you, did you have any understanding, or did you know that he would engage other counsel to assist him?

A. At the time, I did not.

Q. And you had not authorized him to do so?

A. At the time I sent him the check I had not done so.

Q. Well, when did you do so?

A. Shortly thereafter.

Q. And who did you authorize him to associate himself with?

[fol. 167] A. Well, the firm of Robinson, Hill and Martin.

Q. The land books of Arlington County show that you own 14 parcels of land, is that correct?

A. I don't know. I would have to count them.

Mr. Robinson: I make the same objection, if Your Honor please, to that question.

The Court: Same ruling.

Mr. Robinson: Exception.

By Mr. Wickham:

Q. Well, would that be approximately correct?

A. I have no idea. I would really have to count them.

Q. Well, the land books also show that the appraised value of your real estate is something over \$87,000, is that correct?

A. I don't know what the land records show, sir.

Q. Well, would you say that was a fair value of the land you own in Arlington County?

A. I would have to stop and make a list and put my own personal values on it.

Q. Well, would you say that the value of the land you own in Arlington County is worth more than \$80,000.

A. I really wouldn't know without making a list, sir.

Q. Would you say it was worth more than \$70,000?

A. I still wouldn't know until I made a list of the things that I have in Arlington County.

Q. Would you say it was worth more than \$60,000?

Mr. Robinson: I object, Your Honor. This question has been asked three or four times. The witness says he doesn't know, and he can't say until he makes a list and puts his own appraisal of the value on it.

The Court: All right, I sustain the objection.

By Mr. Wickham:

Q. How long would it take you to make up a list and estimate the value of your real estate in Arlington County?

A. Well, I would have to go home and get my tax blanks and figure out what I had. I can mail it to you.

Q. How long would it take you to do that?

A. Well, I will do it tonight and put it in the mail, and you will have it tomorrow or the day after tomorrow.

[fol. 168] Mr. Hill: Your Honor, that seems to be a ridiculous requirement, to make this witness send a list of his real estate. What difference does it make whether he owns \$50,000 worth of real estate or \$200,000 worth of real estate?

That has no pertinency to any issue in this case.

The Court: Objection overruled.

Mr. Hill: I note an exception.

By Mr. Wickham:

Q. Will you then as soon as possible, Doctor, send us the number of parcels of real estate you own in Arlington County and the appraised value of those parcels?

A. The appraised value?

Q. Well, you can either get it off the land books or you can estimate it yourself.

Mr. Hill: Your Honor, I want to make a further objection to it. This witness is no party to any litigation here. He is under subpoena by these defendants, and they can't force him to take the stand and do a whole lot of things outside the Court. They have got the land book records. They have public records. They can go up there and get them and bring them down. They have got copies of them, I assume. If they want to introduce the land book records or introduce copies of them or something of that sort, they can. But I submit it is an imposition to require this witness to go back and get some land records and send them back here when all he is is a witness in this case.

The Court: Let me ask you this: Do you think a witness cannot be compelled to furnish information to the Court when requested?

Mr. Hill: Of course, under certain circumstances a witness can be compelled to submit information, that is perfectly obvious. But I am pointing out to the Court that where the defendants have subpoenaed a man to come here and testify—now, he came here under their subpoena, he is not a party to this litigation or anything else, and for them to require him to go back and make up some record of his appraisal of his property which has no pertinency whatsoever to any issue in this case, I submit that that is an imposition on this witness.

The Court: Do you care to be heard?

Mr. Wickham: No, Your Honor, I think Your Honor has already ruled as to the materiality of this evidence, and we have nothing further to say.

[fol. 169] The Court: Well, the Court has already ruled on the materiality of the evidence in this type case. And having done so, and since this witness was unable to give any opinion at all as to the real property he owned, but



said he could prepare a list, the Court expects him to furnish such a list.

Dr. Johnson, would you state to the Court within what time you can prepare a list as requested by counsel?

The Witness: Let me state this now. I am a very busy person. We have a lot of people who are sick. I just got back Friday from being away where I went out to bury my mother, and coming here I found this little subpoena tacked on my door the night before last, a thing of that size, and I just resent the intimidation involved here.

Now, I will make out the list as soon as I can. I think it is most unfair, but I shall certainly comply with the Court's request on this thing. I will get it to you sometime this week, as soon as I possibly can.

The Court: What date would counsel like to have it? It can be submitted as part of the evidence at any time coming in as an exhibit in connection with his testimony.

Mr. Wickham: Any time this week, I think.

The Court: Dr. Johnson, will you be able to prepare it by Friday or Monday of next week?

The Witness: I think I can possibly get it by that time, after I get caught up with my work and can go to the courthouse. I may be short a tax blank, I don't know.

The Court: Suppose we give you until Monday of next week.

The Witness: Will someone tell me where I can send it?

The Court: You can forward it to the Clerk of this court. The Clerk will give you a self-addressed envelope.

The Witness: What am I supposed to do?

The Court: You have been requested to prepare an assessed valuation on your parcels of land that you own in Arlington.

The Witness: On the parcels of land that I own—

Mr. Wickham: Not the assessed value, either the appraised value or the fair market value—the assessed value—I don't care, either one or the other.

The Witness: They have on the tax blank the amount of money they are taxing me on, is that what you want me to put down?

Mr. Wickham: I want the appraised value.

[fol. 170] The Witness: But the appraised value is not on the book.

Mr. Wickham: Well, you show whatever is on the blanks that you have or on the books.

The Witness: What is on the blank, that is what you want?

Mr. Wickham: That is correct.

The Witness: That is in my name?

Mr. Wickham: That is correct.

The Witness: All right.

The Court: Mr. Hill, in view of your position on this, perhaps I might ask you whether you would be willing to stipulate that this could come in from the Office of the Treasurer, or possibly the Finance Officer?

Mr. Hill: Certainly. That would certainly seem to me to be a better way of doing it. Your Honor. I still don't agree that the evidence is pertinent or relevant, but so far as what the figures show, as I said, we are perfectly willing to stipulate with respect to those, if they say they are correct figures.

The Court: I mean obviously we are all familiar with the land book and what it shows, and, of course, if you think it is such a hardship, rather than have the witness doing it, I mean you could simply file it by stipulating to admitting whatever the Treasurer of Arlington County's land books would show.

Mr. Hill: If they will submit the figures, we would be perfectly willing to stipulate that those are the figures—if Mr. Wickham says they are accurate, I will stipulate that they are accurate. Of course, we don't waive any objection to the evidence.

The Court: To the materiality, I understand.

In view of the stipulation, Dr. Johnson, you don't have to furnish anything.

Any further questions of this witness?

Mr. Wickham: No.

The Court: Any cross examination of this witness?

Mr. Hill: No.

The Court: Doctor, you are excused. You may return to Arlington.

(Witness excused.)

Mr. Wickham: Barbara S. Marks.

The Court: How many witnesses do you have for today?

Mr. Wickham: Eleven, I think.

[fol. 171] BARBARA S. MARKS, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name and address?

A. My name is Barbara S. Marks, 6897 North Washington Boulevard, Arlington.

Q. Mrs. Marks, were you a plaintiff in the Arlington school segregation cases brought in 1956?

A. I was.

Q. Are you a member of the Caucasian race?

A. I assume you would say so. I question these race definitions, but I assume you would say so.

Q. What is your occupation?

A. Housewife.

Q. Do you hold any office in the local branch of the N. A. A. C. P. in Arlington County?

A. I am the vice president.

Q. You are today?

A. Yes.

Q. Were you in 1956?

A. Yes.

Q. How did you become a plaintiff in this suit?

A. I became a plaintiff in this suit because I object strongly to my children attending segregated schools, and I would like to see schools desegregated in Arlington.

Q. How did you become a plaintiff in this suit?

A. I signed a petition which was presented to the school board on July, 28th, requesting Arlington school board to cease assigning children on a basis of race.

Q. Where did you obtain that petition?

A. I think that the branch received a copy of that petition probably through the mail from Richmond.

Q. From the State Conference?

A. Probably.

Q. And what did that petition say?

A. Well, I am sure you have seen a copy of it. I don't have it here, but it requested that the Arlington school board reorganize their school system so that assignment would not be based on race, and it was a petition to be signed by parents of school-age children, and it was presented on July 28th to the Arlington school board at a school board meeting.

[fol. 172] Q. Well, what action did the school board take on that petition?

A. The school board said they were going to follow instructions they had received from the State Department of Education, I guess it was, and continue the segregated setup for the following school year.

Q. Did you say you received that petition as an officer of the N. A. A. C. P., local branch of the N. A. A. C. P.?

A. I don't think the petition was sent to me, it was sent to the president.

Q. To the president?

A. We discussed it in Executive Committee meeting, and I signed it in Executive Committee meeting.

Q. And then did you help circulate that petition?

A. I helped circulate that petition.

Q. Now, after the school board refused to grant the request contained in the petition, what step did you take next, leading up to the bringing of the lawsuit?

A. Well, I think in conversation with Attorney Hill and Attorney Robinson I asked if we were not going to do something to follow up on that petition after it had been refused.

Q. What was Attorney Hill and Attorney Robinson—how did you happen to be talking to them?

A. I met them at the State Convention of the N. A. A. C. P. in Charlottesville, and asked them if we couldn't follow up in Arlington, that was in October 1950, if we couldn't follow up as long as the school board had refused to do anything on our petition.

Q. What capacity did Mr. Hill and Mr. Robinson hold?

A. Well, you knew that Mr. Hill was chairman of the State Legal Staff.

Q. And Mr. Robinson?

A. Well, he is on the legal staff, too.

Q. So this was—was this discussed, you say, at the State Conference?

A. It was discussed very fleetingly, because they were very busy, and they said they would get in touch with us later.

Q. Well, did you expect to employ Mr. Hill and Mr. Robinson to represent you?

A. Well, I knew that when the time came to file the suit that they would be the ones who would probably prepare the brief, and I was trying to urge them to do something [fol. 173] about Arlington soon, because I had been very impatient to get the Arlington schools desegregated.

Q. Did you personally employ them to represent you, or did you work through the local branch of the N. A. A. C. P. either as a member or as an officer?

A. No, I realized that the setup was that the suit was not brought by the branch, that the suit was brought by the plaintiffs as individuals, but I knew that they would be the lawyers who would be drawing up the brief when it was finally drawn up.

Q. You mean that they would be the attorneys to represent all the plaintiffs in the case?

A. Yes.

Q. You knew that before you had obtained the plaintiffs?

Mr. Robinson: If Your Honor please, that is a forked question. I think that Mr. Wickham should reframe it. He has got two questions in one there, and I don't think it is proper to ask this witness that kind of a question.

The Court: I overrule the objection.

Mr. Robinson: I except, Your Honor.

The Court: Read the question back, please.

(Question read.)

The Witness: I did not obtain any plaintiffs. I obtained some signatures to a petition. Later some of those people became plaintiffs, some of them didn't.



By Mr. Wickham:

Q. Well, you became a plaintiff later?

A. Yes, I became a plaintiff. I signed an authorization when the time came and became a plaintiff.

Q. And who did you employ to represent you?

A. I signed an authorization for Attorney Edwin C. Brown, and I think the authorization form stated "and other attorneys" but the authorization I signed in the presence of Attorney Brown.

Q. Did you have any arrangement with Attorney Brown as to the payment of expenses and legal fees?

A. No, because I knew that in cases of this kind that the State Conference would finance the suit, and I made contributions to the N. A. A. C. P., but there was never any legal fee, except I did pay, I think it was, \$15 to have a [fol. 174] brief, printing the brief when the suit came up in Baltimore before the Fourth Circuit Court.

Q. Did you have ample means to help defray the expenses of the litigation?

Mr. Hill: Objection. The question is leading, Your Honor.

The Court: Will you read the question, please?

(Question read.)

The Court: I overrule the objection.

Mr. Robinson: Your Honor, I further object to that same question on the ground that we have objected to questions of the same character.

The Court: Objection overruled.

Mr. Robinson: Exception.

The Witness: In Mr. Thompson's report he tells you what my income is. They went down to the courthouse and looked at my divorce decree, and they tell you that I got \$4,000 a year alimony. That isn't enough to go up to the Supreme Court and back twice.

By Mr. Wickham:

Q. Do you own any real estate in Arlington County?

A. Yes, I own the house in which I live.



Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

By Mr. Wickham:

Q. What is the value?

A: It is assessed, I think, at around \$31,000.

Q. If you knew that the Arlington case was not to be financed by the State Conference, would you have been a plaintiff in that suit or continue the prosecution of that suit?

Mr. Hill: I object to that, Your Honor. That is speculation. Here it is two or three years later.

Mr. Wickham: If Your Honor please, again I refer to Chapter 36, which uses the word "inducement," and the prohibition of the provisions of that chapter prohibit anyone who has no financial interest in the litigation from inducing another person to litigate against the state or an [fol. 175] agency thereof. Therefore, I think it is very material that it be determined whether or not Mrs. Marks was induced by the financial aid offered by the State Conference.

The Court: Read the question again, please?

(Question read.)

Mr. Hill: We would also like to state, Your Honor, before you rule, that not only is this question speculative, but also this is the defendants' witness, and he is asking those speculative questions.

The Court: I am going to overrule the objection.

The Witness: I would certainly have started in this suit, whether I would have gotten up to the Supreme Court and back again on my own finances, I doubt, but I certainly would have started and gone as long as I could have financed it.

Mr. Wickham: No more questions.

The Court: You are excused. You may return, if you like, to Arlington, or wherever you care to go, but don't discuss the case with any other witnesses.

(Witness excused.)

The Court: We will recess until ten minutes to eleven.  
(Recess.)

The Court: Next witness.

Mr. Wickham: We call E. Leslie Hamm.

Whereupon, E. LESLIE HAMM, was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. E. Leslie Hamm, 1900 North Camden Street, Arlington, Virginia.

Q. And what is your occupation?

A. Architectural draughtsman.

[fol. 176] Q. Are you a plaintiff in the Arlington Segregation Case?

A. I am.

Q. Are you one of the original plaintiffs that brought suit in 1956?

A. Yes.

Q. Who were your attorneys in that suit?

A. Edwin C. Brown represented me.

Q. No other attorney?

A. Well, he had associates, Mr. Robinson and Mr. Hill.

Q. Did you have any understanding with Mr. Brown concerning the payment of expenses or legal fees?

A. We didn't discuss payment of fees.

Q. Did you know whether or not if the N. A. A. C. P. would bear the expenses and the legal fees in that litigation?

A. I did not.

Q. You did not know?

A. No.

Q. Have you received a bill from Mr. Brown or any other attorney for services rendered to date in that case?

A. No, I haven't.

Q. Do you expect to?

A. Well, I don't know, we haven't discussed it as I said, if they present a bill I will have to be obligated to them, I suppose.

Q. What was your income in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. Can you estimate just approximately what your income was in 1956?

A. Approximately \$5,000.

Q. Are you married?

A. Yes.

Q. Are you separated?

A. No.

Q. Does your wife work?

A. Yes.

Q. Could you estimate what her income was in 1956?

Mr. Hill: Same objection.

The Court: Same ruling.

[fol. 177] Mr. Hill: Exception.

By Mr. Wickham:

Q. Could you estimate what her income was in 1956?

A. I would estimate \$3,000.

Q. Do you own any real estate in Arlington County?

A. Yes.

Q. Is it your home?

A. Yes.

Q. Can you estimate the value of your home in dollars?

A. I would estimate \$18,000.

Mr. Wickham: No further questions.

The Court: Any cross examination?

(No response.)

The Court: Mr. Hamm, you are excused, and you may go back to Arlington if you wish.

(Witness excused.)

Mr. Wickham: Edward D. Strother.

Whereupon, EDWARD D. STROTHER, was called as a witness, and having been first duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. My name is Edward D. Strother, 2819 South 18th Street, Arlington.

Q. What is your occupation?

A. I am a horseshoer.

Q. Do they have any horses left in Arlington County?

A. We don't have too many in Arlington, I have got to go out and get them.

Q. Were you a plaintiff in the Arlington Segregation Case that was brought in 1956?

[fol. 178] A. Yes, sir.

Q. Are you married?

A. Yes, sir.

Q. Does your wife work?

A. Yes, sir.

Q. Would you estimate—first of all, do you and your wife file joint returns, tax returns?

A. Yes, sir.

Q. Could you estimate the total income for 1956?

Mr. Hill: I object, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. You may answer the question.

A. What did you say?

Q. Could you estimate the total income for yourself and your wife in 1956?

A. Oh, my income tax, about \$8,000.

Mr. Wickham: No further questions.

Mr. Hill: No questions.

The Court: Mr. Strother, you are excused, you may leave and return to your home or your business, or if you care to, you may still stay in the courtroom.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: George L. Nelson.

Whereupon, GEORGE L. NELSON, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. George L. Nelson, 2005 North Camden Street, Arlington.

Q. What is your occupation?

[fol. 179] A. I am a policeman in Washington, D. C.

Q. Were you a plaintiff in the Arlington segregation suit?

A. Yes, sir.

Q. Are you still a plaintiff in that suit?

A. Yes, I am.

Q. Will you approximate your income for the year 1956?

Mr. Hill: I object.

The Court: Same ruling.

Mr. Hill: Exception.

The Court: Repeat the question.

By Mr. Wickham:

Q. Will you estimate your income for the year 1956?

A. About \$4,990.

Q. Are you married?

A. Yes, I am.

Q. Does your wife work?

A. No, she doesn't.

Q. You estimate it at \$4,990. Is that after social security?

A. No, that was my base salary at the time the social security and taxes are taken out.

Q. That is your base salary, you get more for overtime?

A. If I worked overtime, yes, sir.

Q. Did you work overtime in 1956?

A. I worked a little overtime.

Q. So you might say that your income possibly was over \$5,000 in 1956?

A. It could have been.

Q. Do you know whether or not the State Conference of the N. A. A. C. P. was going to pay the expenses in this litigation, and the attorneys' fees?

A. Do I know—

Q. Do you know whether or not the State Conference of the N. A. A. C. P. was to pay the expenses and attorneys' fees in the Arlington segregation case?

A. Well, I don't know—I don't—I wouldn't say that I knew.

Q. Who was your attorney?

A. Mr. Brown, Mr. Reeves.

Q. Did you have any other attorneys?

A. No.

Q. Did you ever make any arrangements with Mr. Brown [fol. 180] and Mr. Reeves as to the payment of the expenses in this litigation?

A. Well, I never approached them.

Q. And they never approached you about it?

A. No. Well, the case isn't over, is it?

Q. Do you expect them to render a bill for their services?

A. If they render a bill I would try to pay it, sir.

Mr. Wickham: No further questions.

The Court: You are excused now, and you may either leave, or if you care to, you may sit in the room.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Audrey T. Newman.



Whereupon, AUDREY T. NEWMAN, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. Audrey T. Newman, 5554 Lee Highway, Arlington.

Q. Are you a plaintiff in the Arlington segregation suit that began in 1956?

A. Yes.

Q. What is your occupation?

A. Housewife.

Q. Are you married?

A. Yes.

Q. What is the occupation of your husband?

A. He works for the Federal Government.

Q. Do you all file a joint income tax return?

A. Yes.

Q. Could you estimate what that income was in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

[fol. 181] Mr. Hill: Exception.

The Witness: Well, I couldn't tell you what my husband makes, I don't question him on it.

By Mr. Wickham:

Q. Well, did you file a joint income tax return?

A. That is right.

Q. Did you sign it?

A. I signed it.

Q. But you didn't read it?

A. But he takes care of it, and I trust him.

Q. You did not read it?

A. I don't read it all, he takes care of the bills.

Q. So you don't know what your income was?

A. Not exactly, I couldn't say exactly.

Q. Could you estimate it? Just approximately what was the income? Was it over \$6,000?

A. No, it wasn't.

Q. Was it over \$5,000?

A. I just can't say exactly what it is.

Q. Well, could you estimate it in 1957, this last year?

A. It runs about the same each year, but I don't guess it is over \$4,000.

Q. You don't know what your husband makes?

A. Not exactly. I do not know the exact figures he makes, because I don't ask him about it.

Q. Who were your attorneys in this case, in the Arlington School case?

A. Well, what do you mean?

Q. Who represented you—your children were also plaintiffs, weren't they?

A. One boy.

Q. One boy?

A. Yes.

Q. Who represented you and your child?

A. Well, that was more than one—I didn't talk to any certain lawyer, they gave us some advice, and we had a meeting, I didn't talk to them until after I filed my pupil placement report.

Q. You say they gave you some advice at a meeting, was that a meeting of the N. A. A. C. P.?

A. This was a meeting of mothers first.

Q. And then when was the next meeting?

[fol. 182] A. I don't know exactly when it was, it was some time during this summer.

Q. What went on at that meeting?

A. We decided that we wanted our children to go to school, the one that was nearest us.

Q. Do you know whether or not the State Conference of the N. A. A. C. P. is to pay the expenses of this litigation?

A. I can't say for sure.

Q. You don't have any knowledge of that at all?

A. Not exactly.

Q. What do you mean by "not exactly"? Do you expect to pay any part of the expenses in the litigation?

A. No, I don't. I do know the N. A. A. C. P. will help us in legal advice, I don't expect to pay.

Mr. Wickham: No further questions.

Cross examination.

By Mr. Hill:

Q. You haven't paid anything to your lawyers, have you?

A. None whatsoever, I haven't paid one cent.

Mr. Hill: That is all.

The Court: All right, Mrs. Newman, you may be excused now, you may leave and return to your home, or sit in the courtroom if you like.

(Witness excused.)

Mr. Wickham: We call Josie F. Pravad.

Whereupon, Josie F. Pravad, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. Josie F. Pravad, 2900 South 20th Street, Arlington Virginia.

Q. What is your occupation?

[fol. 183] A. File clerk in the government.

Q. Are you married?

A. Yes, I am.

Q. Does your husband work?

A. Yes, he does.

Q. Where is he employed?

A. Washington Navy Yard, Washington, D. C.

Q. Were you a plaintiff in the Arlington School segregation case that was brought in 1956?

A. Yes.

Q. Who represented you in that case, or who is representing you?

A. Who is representing me? I haven't a lawyer representing me, if that is what you mean.

Q. You do not?

A. No, I don't.

Q. How did you become a plaintiff?

A. How did I become a plaintiff? Well, because education in Arlington, Virginia, is so very unequal, until I decided that I would like for my daughter to go to either school where she would have equal opportunity in education. And so I decided to try to enter her. And when she was turned down, I understood that I could be represented by the National Association for the Advancement of Colored People, who had a case, and consequently I did go under—well, as I said, I sent my child to the school and she was turned down, that is all I know.

Q. And you are being represented by the N. A. A. C. P.?

A. Yes.

Q. Did you and your husband file a joint income tax return in 1956?

A. We did.

Q. Could you estimate the income in that year?

A. I am sorry—

Mr. Hill: Same objection.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: I couldn't any way.

By Mr. Wickham:

Q. Could you estimate it in 1957?

A. I could not, because we carried our W-2 forms to a woman and she fills them out, and we have a joint return, that is all I know.

[fol. 184] Q. Where are you employed?

A. I am employed with the Justice Department, Bureau of Prisons, Washington, D. C.

Q. Don't you have an annual salary from your employer?

A. Yes, of course, government salary.

Q. What is your salary?

A. I really couldn't tell you, I am a GS-4, and you would have to look at the table, I wouldn't know.

Q. You couldn't estimate?

A. I would be afraid to.

Q. And you have no idea what your husband makes?

A. None whatever.

Q. You couldn't estimate what your salary was within \$1,500?

A. Hardly, I would be afraid to. You have a table, there is a GS-4 Table that would tell you that.

Q. GS-4 Table?

A. Yes.

Q. Well, do you know what rating your husband has with the government?

A. I really don't.

Q. Is it higher than a GS-4?

A. They don't go by that, they go by levels, and I am not sure about that, I don't know.

Q. You don't know what level?

A. No.

Q. Would you be surprised if you and your husband made more than \$7,000 a year?

A. I am sorry. I can't say that, because I don't fill out my forms, I tell you; we go to a woman, she puts the things in and we send them in, I do know that we filed the forms, but as to the amount I couldn't tell you that.

Q. Would you be surprised if you and your husband made more than \$5,000 a year?

A. If we do we don't see it. But I couldn't tell you, I am sorry.

Mr. Wickham: No more questions.

Cross examination.

By Mr. Robinson:

Q. Mrs. Pravad, did you attend some meetings that were held with reference to the school situation in Arlington [fol. 185] some time during the summer of this year, the summer of 1958?

A. Yes, I did.

Q. And other parents of Negro children in Arlington County also attended?

A. Yes, they did.

Q. Did you know about how many such meetings you did attend?

A. Well, to be frank with you, I only attended one, because we went on our vacation around that time, and I was not available.

Q. Do you know attorney Frank D. Reeves from Washington?

A. Yes, I do.

Q. Was Mr. Reeves present at that meeting?

A. Yes, he was.

Q. Do you know Attorney Otto L. Tucker from Alexandria?

A. I have met him.

Q. Was he present at that meeting?

A. I think he was, I am not too sure.

Q. Wasn't it at this meeting that you authorized Mr. Reeves and/or Mr. Tucker to represent you in litigation concerning your child in the schools of Arlington County?

A. Yes, I did.

Q. And that was during the summer of 1958?

A. Yes.

Mr. Robinson: That is all.

The Court: You may be excused, you are free to leave and return home.

(Witness excused.)

Mr. Wickham: Ruth M. Rout.

Whereupon, RUTH M. ROUT, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

[fol. 186] A. Ruth Rout, 3011 Seventeenth Road, Arlington, Virginia.

Q. What is your occupation?

A. Government clerk.

Q. From what department?

A. Army, Department of Defense.



Q. In Washington?

A. Yes.

Q. Are you a plaintiff in the Arlington School Segregation case?

A. Yes.

Q. Are you married?

A. Yes.

Q. What is the occupation of your husband?

A. Government clerk.

Q. And where does he work?

A. Department of Defense, Washington, D. C.

Q. Does he work at the same place you work?

A. Yes.

Q. What type of job do you do there, what type of work?

A. I am a clerk-typist.

Q. And what does your husband do there?

A. He is a clerk.

Q. What type of work?

A. Supervisor.

Q. Clerk-supervisor?

A. Yes.

Q. Is he your supervisor?

A. No.

Q. He is not in the same office?

A. No.

Q. When did you become a plaintiff in the Arlington School case?

A. Just this year.

Q. 1958?

A. Yes.

Q. Who is your attorney in that suit?

A. Mr. Tucker, Mr. Reeves.

Q. Did you go to them and retain them—did you go to them and get them to represent you in this suit?

A. Yes.

Q. Where does Mr. Reeves—where is his office?

A. I didn't go to his office, we parents of the children, we decided that we would get help from the attorney.

[fol. 187] Q. Well, what arrangements did you make with Mr. Reeves and Mr. Tucker as to the payment of expenses and attorney's fees?

A. Payments?

Q. Yes.

A. We didn't make any arrangement for payment.

Q. Well, you don't expect to pay anything?

A. No.

Q. Do you know whether or not the N. A. A. C. P. is going to pay for the expenses in that suit?

A. That is the usual—they usually do.

Q. Did you and your husband file a joint return, income tax return in 1956, or 1957?

A. Joint?

Q. Yes.

A. We filed this year for last year joint, yes.

Q. Can you estimate what the income is?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: I can't recall.

By Mr. Wickham:

Q. Are you on salary with the government?

A. Yes.

Q. Do you know what your salary is with the government?

A. Yes.

Q. What is your salary?

A. I didn't work for a whole year in 1957.

Q. Well, what is your salary in 1958?

A. I am sorry, I can't tell you exactly now.

Q. Can you approximate it within \$500?

A. I can't see what that has to do with this. I can't recall it exactly.

Q. I say, can you approximate it?

A: It is about \$3,400.

Q. Did your husband make more than you?

A. He makes more, yes.

Q. He makes more than you do?

A. Yes.

Mr. Wickham: No further questions.

Mr. Hill: No questions.

The Court: All right, you are excused, you may leave.  
[fol. 188] (Witness excused.)

The Court: Next witness.

Mr. Wickham: Harry Stother.

Whereupon, HARRY STOTHER, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. Harry Stother, 2102 North Dinwiddie Street.

Q. What is your occupation?

A. I am a cab driver.

Q. How long have you been a cab driver?

A. Since April of this year.

Q. What was your employment before that time?

A. Washington Terminal, Washington, D. C.

Q. What did you do there?

A. Coach cleaner at the terminal.

Q. Are you a plaintiff in the Arlington School segregation case?

A. Yes, I am.

Q. When did you become a plaintiff in that case?

A. Well, either in July or August, I don't remember exactly.

Q. Of this year?

A. Of this year.

Q. Who is your attorney in that case?

A. My attorney—I don't know—we had the N. A. A. C. P. lawyers, I don't know which one it is.

Q. The N. A. A. C. P. attorneys are your attorneys, representing you?

A. Yes, sir.

Q. When did you first—when did they first get in contact with you?

A. I don't think—they have never been in contact with me.

Q. Well, how did you become a party to the suit?  
 [fol. 189] A. Well, the group of parents got together in a meeting and said that our children should go to the nearest school to where they lived, and the lawyers said they would represent us if we had to go to court.

Q. When did they tell you that?

A. At one of the meetings.

Q. Well, what meeting was this?

A. The meeting of the parents at the church.

Q. Well, were the N. A. A. C. P. attorneys present at that meeting?

A. When they told us that they were?

Q. Do you know how they got to that meeting?

A. No, sir, I do not.

Q. Did you ask them to come to the meeting?

A. No, I didn't.

Q. I know it would be hard as a taxicab driver, but can you estimate what your income is going to be this year?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: I couldn't estimate.

By Mr. Wickham:

Q. What was your income in 1957?

A. As well as I can remember, a little over \$3,800.

Q. Does your wife work?

A. No, sir.

Q. She does not work.

Mr. Wickham: We have no further questions.

The Court: Any cross?

Mr. Hill: No questions.

The Court: All right, Mr. Stother, you are excused, you are free to leave and go back to your business, if you like.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Alex M. Davis.

[fol. 190] Whereupon, ALEX M. DAVIS, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. Alex M. Davis, 607 10½ Street, Northwest, Charlottesville, Virginia.

Q. What is your occupation?

A. Carpenter.

Q. How long have you been a carpenter?

A. Since September 15.

Q. Of this year?

A. Of this year.

Q. What was your occupation before that time?

A. I was a general field superintendent for an insurance company.

Q. You were what?

A. General field superintendent for an insurance company.

Q. I see. As a carpenter, have you got your own business, or are you employed by someone else?

A. I am employed by private people.

Q. Are you a plaintiff in the Charlottesville Segregation case that was brought in 1956?

A. I am.

Q. What was your occupation at that time?

A. I was a district superintendent in the Charlottesville district for the insurance company.

Q. Did you have any other job on the side at that time?

A. No.

Q. Are you married?

A. I am married.

Q. Does your wife work?

A. No.

Q. Will you estimate what your income was in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. What was your income in 1956, approximately, just an estimate?

[fol. 191] The Witness: Your Honor, I object to that question.

The Court: Your attorney has already objected to it, and I have already overruled it. The Court wants the information in the record. So if you have the information or can get approximately the figure—

The Witness: I don't have it, I don't know.

By Mr. Wickham:

Q. Would you say it was more than \$5,000?

A. I couldn't say.

Q. Would you say it was more than \$4,000?

A. I couldn't say.

Q. You have no idea?

A. I think that is my personal affair, I refuse to answer the question.

Mr. Wickham: If Your Honor please, I believe the witness knows the answer to the question, and he is refusing to answer. I think that he should be made to answer the question. He keeps saying it is not anybody's affair but his own.

The Court: Mr. Davis, the question regarding the income of you and the other witnesses this morning has been ruled material by the Court to the proceeding here, and although objection has been made by the complainants' lawyers in each case to this question, the Court has required it to be given in each case. So you are requested to furnish the Court with such information as you have, an approximation of the figures of your income for the period in question.

State the question again.



By Mr. Wickham:

Q. Would you approximate your income for 1956?

A. For 1956?

Q. That was the year in which you became a plaintiff in the Charlottesville School Segregation case.

A. Approximately \$3,500.

Q. No more than that?

A. That is as close as I can get to it offhand.

Mr. Wickham: We have no further questions.

Mr. Hill: No questions.

The Court: You are excused, you may leave.

(Witness excused.)

[fol. 192] The Court: Next witness.

Mr. Wickham: Eugene Williams.

Whereupon, EUGENE WILLIAMS, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Eugene Williams, 620 Ridge Street, Charlottesville, Virginia.

Q. What is your occupation.

A. District manager for Richmond Beneficial Insurance Company.

Q. Is that a life insurance company?

A. Yes.

Q. Were you a plaintiff in the Charlottesville segregation case that was brought in 1956?

A. Yes—well, not in 1956, because my children weren't old enough to enter school.

Q. When did you become a plaintiff?

A. Last summer.

Q. In 1958 of this year?

A. Yes.

Q. Who are your attorneys in that suit?

A. I used the attorneys of the N.A.A.C.P.

Q. Who are they?

A. Well, I wouldn't know all of them, I know the chief counsel, Mr. Oliver Hill, and Spotswood Robinson.

Q. Are there any others that you can think of?

A. As I say, I wouldn't know all of them.

Q. Do you know a Mr. Tucker?

A. I know Mr. Tucker, yes.

Q. Is he one of your attorneys in that suit?

A. I am using the lawyers of the N.A.A.C.P., was my answer.

Q. Have you made an arrangements with those lawyers as to the payment of expenses or attorney's fees?

A. Well, if the N.A.A.C.P. failed to pay them, well, I have agreed that I would accept the bill.

Q. How did you come to be a plaintiff in the School case?

A. I came to be a plaintiff because, number one, I have [fol. 193] never believed in separate but equal education, and after May 17, 1954, that affirmed my belief.

Q. What was your first contact with your attorneys?

A. Well, my first contact with my attorneys was that I told them of my action, that I had made application for my children to enter Johnson Elementary School, and, well, there it went on.

Q. Where did you tell your attorneys this, did you come to Richmond to tell them that?

A. I don't remember.

Q. You don't remember?

A. I don't remember if I came to Richmond, or if I talked to them in Charlottesville.

Q. Well, if you told them in Charlottesville, where would that place have been?

A. I don't remember where I told them.

Q. Do you remember talking to them?

A. Sure.

Q. But you don't remember where?

A. You see, my home office is here in Richmond, I am in Richmond as much as in Charlottesville, so I don't remember.

Q. If it was in Charlottesville, where would it have been?

A. I don't remember where I told them, it could have been in the street, it could have been in church, I don't remember.

Q. Will you state what your income was the last year?

Mr. Hill: Objection.

The Witness: No, I would not state that.

The Court: Overruled.

Mr. Hill: Exception.

By Mr. Wickham:

Q. What was your income in 1957?

A. I would not state it.

Do I have to state it?

The Court: Yes, the Court has ruled that material as far as you and the rest of the witnesses are concerned in the proceeding.

The Witness: Well, I don't remember my income either; [fol. 194] I am under oath and I don't remember it.

By Mr. Wickham:

Q. You can't estimate your income?

A. I can estimate it.

Q. What is your estimate?

A. Maybe as much as \$4,000..

Q. It wouldn't be as much as \$6,000?

A. I just told you I didn't remember, and you asked me to estimate.

Q. Would it be as much as \$6,000?

A. I don't remember.

Mr. Robinson: Your Honor, I object, I think the witness is right about this, he said he couldn't state definitely, and he estimated it when he was asked, and I think that is all the witness can be expected to do.

The Court: Objection sustained.

By Mr. Wickham:

Q. Have you got your W-2 form?

A. No.

Q. Have you got it available?

A. Not as far as the Federal Government—

Q. Have you got it at home?

A. I don't know that.

Q. Didn't you state a few minutes ago that you had the W-2 form?

A. I don't know, if not, I can get it from the Federal Government.

Q. Did you have any income other than as manager of the insurance company?

A. No.

Q. Could you call your office here in Richmond and find out what your income was in 1957?

A. They may have it.

Q. Wouldn't they have it?

A. I work in Charlottesville, I don't know what they have in Richmond.

Q. Did you get paid out of Richmond or out of Charlottesville?

A. I get paid out of Charlottesville. I make up my own pay-roll.

[fol. 195] Q. You make up your own pay-roll, and yet you don't have any idea of what your income is?

Mr. Hill: Your Honor, the witness estimated his income.

Mr. Robinson: This is Mr. Wickham's witness, and he is not on cross-examination.

The Court: I sustain the objection.

Mr. Wickham: If Your Honor please, I would like to subpoena this witness' income tax return for 1956 and 1957, unless he can furnish us with the amount of his income for those years.

The Court: I don't believe that question has ever been put to them, has it? I don't know that any precise question has ever been put to them as to whether he can furnish it.

Mr. Wickham: I will put it to him.

By Mr. Wickham:

Q. Mr. Williams, can you furnish the Court with your income for 1956 and 1957?

A. I will try.

Q. I would like to have a "yes" or "no" answer on that.

A. I will try to get it, that is the best I can do.

Q. Well, when do you think you could obtain that information, if you can obtain it?

A. In the next two or three days.

Q. You couldn't obtain it today from the Richmond office?

Mr. Hill: Your Honor, the witness said he would try to get it, he would get it in the next two or three days, he said he didn't know whether he could get it from the Richmond office; obviously he wouldn't know that.

Mr. Wickham: He didn't say he would get it yet.

Mr. Hill: He said he would try.

The Court: At what time can you obtain the figures on your 1956 and 1956 income?

The Witness: I will try to have it in the next two or three days.

Mr. Wickham: We have no further questions, Your Honor.

Mr. Robinson: If your Honor please, the Court understands that we object to this witness being required to supply this information on the same basis that we made objections to questions that were asked for testimony concerning his income, that is, the income of this witness, and the same question asked of other witnesses.

[fol. 196] The Court: The objection is overruled.

Mr. Robinson: Exception.

The Court: Mr. Williams, would you use that envelope, or at least that address, which is the collection address, a self-addressed stamped envelope, and try to obtain that information, and could you get the letter here by Monday morning?

The Witness: Yes.

The Court: All right.

(Witness excused.)

Mr. Wickham: Marshal Garrett.

Mr. Hill: May it please the Court, let the record show the witness was excused.

The Court: All right. The last witness was excused.

Whereupon, MARSHAL T. GARRETT, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. Marshal T. Garrett, 320 West Main Street, Charlottesville, Virginia.

Q. What is your occupation?

A. Physician.

Q. Are you a plaintiff in the Charlottesville School segregation case that was brought in 1956?

A. I was.

Q. Who are your attorneys?

A. Mr. Hill and ... Robinson.

Q. Are you an officer in the local chapter of the N.A.A.C.P.?

A. I was.

Q. You were in 1956?

A. Yes, 1956.

Q. And you are no longer an officer?

A. No.

Q. What arrangements did you make with your attorneys as to the payment of expenses and attorneys' fees in the Charlottesville case?

[fol. 197] A. Well, the arrangement was that we would pay the costs of the Court if the School Board or State didn't take care of our expenses.

Q. Will you repeat that? I don't quite understand what you mean by the School Board.

A. I meant that someone else would take care, the one that would bring the charges against would pay for it—

Q. You mean that the court costs would be assessed against the School Board?

A. Or someone, I don't know.

Q. But that you would bear the expenses if they were assessed against the plaintiff?

A. That is right.

Q. How about the attorneys' fees?



A. That is the same thing, that would be taken care of.

Q. But you would pay the attorneys' fees?

A. Yes, if necessary.

Q. Well, have you ever been billed for any services rendered by your attorneys?

A. Not yet, no.

Q. But you expect to be billed?

A. Well, maybe, I can't say.

Q. Do you know whether or not the State Conference of the N.A.A.C.P. is financing the litigation?

A. Well, they were supposed to help out with it, but I can't say; my understanding was that if someone had to pay it, and it came down to a final basis, I would be responsible for it.

Q. For your share?

A. For my share.

Q. Doctor, do you own any real estate in the city of Charlottesville?

A. Yes; a little bit.

Q. How much?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: Do I answer?

The Court: Yes.

The Witness: Well, I guess my holdings would be approximately \$50,000.

By Mr. Wickham:

Q. And what was your income in 1956?

[fol. 198] A. \$7,000.

Mr. Hill: Same objection.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. What was it?

A. \$7,000.

Q. Are you married?

A. Yes.

Q. Is your wife employed?

A. Yes.

Q. What is her occupation?

A. Teacher.

Q. Where is she employed?

A. Burley.

Q. In the city of Charlottesville?

A. Yes, joint high school.

Q. Was she employed in 1956?

A. Yes.

Q. Is she still employed there?

A. Yes.

Q. Could you estimate your wife's income for 1956?

A. I think about \$4,000.

Q. And it has been about the same in 1957?

A. Yes.

Mr. Wickham: That is all, thank you.

The Court: You are excused, Doctor, you are free to leave.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: George R. Ferguson.

Whereupon, GEORGE R. FERGUSON, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

[fol. 199] A. George R. Ferguson, 702 Ridge Street, Charlottesville, Virginia.

Q. What is your occupation?

A. Mortician.

Q. Were you a plaintiff in the Charlottesville School Segregation case that was brought in 1956?

A. Yes.

Q. Who represented you in that case, or who is representing you?

A. Mr. Hill and Mr. Robinson.

Q. Are you an officer in the local branch of the N.A.A.C.P.?

A. I am.

Q. Were you an officer in 1956?

A. Yes.

Q. Were you president?

A. Yes.

Q. In 1956?

A. Yes.

Q. And you still are president?

A. Yes.

Q. What arrangements have been made between you and your attorneys as to the payment of expenses and legal fees in that school case?

A. Well, when the State put up these N.A.A.C.P. laws, the parents agreed to pay the attorneys whatever fee they charged, when the law went into effect.

Q. You are talking about the laws that were passed by the extra session of 1956?

A. That is right.

Q. Before that time, what was the arrangement with your attorneys?

A. The arrangement was that the N.A.A.C.P. would handle it.

Q. Bear the expenses and attorneys' fees?

A. Yes, that is right.

Q. You say you are a funeral director in the city of Charlottesville?

A. Yes.

Q. What was your income last year?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: You mean my net income?

[fol. 200]

By Mr. Wickham:

Q. That is right—are you in business by yourself?

A. Yes.

Q. Well, what is your income from all sources, after the expenses of operating your business, of course? In other words, I am not asking you how much gross you took in in your business, naturally you have got expenses to offset that gross amount, and I am trying to find out what your adjusted gross income was in 1957.

A. I don't know whether I could give you an accurate answer on that.

Q. Could you estimate it?

A. I would say around \$1800.

Q. \$1800. And that is including your income from your business as funeral director?

A. That is the only income I have.

Q. As a funeral director?

A. That is right.

Q. Do you have a hearse?

A. Yes.

Q. How many hearses do you have?

A. One.

Q. Do you own your own home?

A. I am buying it.

Q. Buying it?

A. Yes.

Q. Can you estimate what your income may be for 1958?

A. That is impossible to do.

Q. Well, don't you have to file quarterly returns with the Federal Government?

A. No.

Q. You do not?

A. No.

Q. Are you married?

A. Yes.

Q. Is your wife employed?

A. Yes.

Q. Where does she work?

A. Albemarle County School Board.

Q. Is she a teacher?

A. Yes.

Q. How long has she been a teacher in the Albemarle School system?

A. Since 1942

Q. And she is still employed there?  
[fol. 201] A. Yes.

Q. What is her income as a school teacher?

A. I would say around \$3600 a year.

Mr. Wickham: We have no further questions.

The Court: Any cross?

Mr. Hill: No questions.

The Court: All right, you are excused, you are free to return to Charlottesville.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: William M. Smith.

Whereupon, WILLIAM M. SMITH, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. William M. Smith, 1709 Preston Avenue, Charlottesville, Virginia.

Q. What is your occupation?

A. I am a government worker, railway transportation clerk.

Q. I didn't hear you.

A. Railway transportation clerk.

Q. For the U.S. Government?

A. That is right.

Q. Is that in the Post Office Department?

A. That is right.

Q. Are you a plaintiff in the Charlottesville School Segregation case?

A. I am.

Q. Were you one of the original plaintiffs when the suit was brought in 1956?

A. Yes.

Q. Are you married?

A. Yes, sir.

Q. Does your wife work?

A. No, she doesn't.

[fol. 202] Q. Who are your attorneys in the Charlottesville case?

A. To my knowledge, Mr. Hill and Mr. Robinson.

Q. How did you come to retain them or employ them?

A. Well, I felt that since the group—you say how did I come to retain them?

Q. Yes.

A. Well, we just got together and felt that they would be the capable lawyers to support us.

Q. Are you a member of the local branch of the N.A.A.C.P.?

A. I am.

Q. And when you refer to "we," do you mean other members of the local branch?

A. The plaintiffs in the case.

Q. When you refer to "we," do you mean all of the plaintiffs in the case?

A. No, the group of plaintiffs that were filing this—

Q. The group to which you refer, I am trying, Mr. Smith, to identify that group. I say, this group to which you refer, are they members of the local branch of the N.A.A.C.P.?

A. To my knowledge.

Q. They were?

A. As far as I know.

Q. And so you all decided to employ the counsel of the N.A.A.C.P.?

A. Yes.

Q. Did you make any arrangements with your counsel as to the payment of expenses and attorneys' fees?

A. Well, we knew that if they ever came up we would reimburse them.

Q. Reimburse them for what?

A. For the services.

Q. If it ever came up, what do you mean if it ever came up?

A. I mean, if they ever presented a bill we would pay for it.



Q. Do you expect them to present a bill?

A. I couldn't tell you.

Q. Have they told you?

A. I couldn't tell you, whenever they do we will have to pay it.

Q. They haven't told you that they were going to present a bill?

[fol. 203] A. They said if it was necessary they would, so I suppose they will.

Q. If it was necessary?

A. Not if it was necessary, but in the due course of time I expect we will get a bill.

Q. You don't know if the N.A.A.C.P. will pay the bill?

A. Well, from what I have read in the paper, I assume they will, but I am one of a group, and I expect to pay my share.

Q. What was your income, Mr. Smith, in 1956?

Mr. Hill: Same objection.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. You may answer the question.

A. 1956—I don't recall exactly, but around \$5,000, I imagine.

Mr. Wickham: We have no further questions, Your Honor.

Mr. Hill: No questions.

The Court: You are excused, Mr. Smith, you are free to leave.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: J. Russell Arnett.

Whereupon, J. RUSSELL ARNETT, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name and address.

A. J. Russell Arnett, Route 5, Box 152 A.B. Charlottesville.

Q. What is your occupation?

A. Life insurance salesman.

[fol. 204] Q. For what company?

A. For North Carolina Mutual.

Q. Well, were your wife and children the original plaintiffs in the Charlottesville School Segregation case?

A. We were until we moved out of the city limits, sir,

Q. And when did you move out of the city?

A. We moved out of the city limits in September.

Q. September of this year?

A. That is right.

Q. Well, were your wife and children the original plaintiffs in the case back in 1956?

A. That is correct.

Q. And they have now withdrawn from the suit?

A. Yes, they are withdrawn, I suppose, because we moved out of the city.

Q. But you haven't done anything to take them out of the suit, nobody has done anything to get their names off as plaintiffs, have they?

A. I don't think we were listed as plaintiffs the last time—

Q. But you haven't seen the court papers?

A. No.

Q. You yourself were not actually a plaintiff?

A. No. I was not in town at the time they gave the attorneys the authority.

Q. You were not in town?

A. So my wife signed, that is right.

Q. Do you know what attorneys are representing your children?

A. Do I know?

Q. Do you know, or do you not know?

A. Yes.

Q. Who are they?

A. I knew Mr. Hill, and Mr. Robinson.

Q. Have any arrangements been made to pay the expenses and the attorneys' fees in the litigation?

A. Well, she was told from the beginning that possibly the plaintiffs might have to pay for the litigation.

Q. You don't know if they might have to pay?

A. Well, at that time we didn't know whether the law would prohibit the N.A.A.C.P. from paying the costs.

Q. You mean the N.A.A.C.P. was going to pay the expenses and attorney's fees if they could legally?

A. I don't know whether they said it like that or not. [fol. 205]

Q. But that is your understanding?

A. That is the understanding.

Q. The laws to which you refer are certain laws which were passed by the Extra Session of the General Assembly in 1956?

A. That is right.

Q. What was your income in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. You may answer the question.

A. About \$5900, I think it was.

Q. Does your wife work?

A. Part time, yes, sir.

Q. Did she work part time in 1956?

A. Yes, sir, part time.

Q. Where does she work, or what does she do?

A. She does beautician work.

Q. Could you estimate what her income would be in that type of work?

A. No, I couldn't very well estimate it, because it is just a part time thing, and she doesn't do it regularly.

Mr. Wickham: We have no further questions, Your Honor.

The Court: All right, you are excused, you are free to return to your business.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Moses C. Maupin.

Whereupon, MOSES C. MAUPIN, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you state your name and address, please.

[fol. 206] A. Moses C. Maupin, 915 Henry Avenue, Charlottesville, Virginia.

Q. What is your occupation?

A. I am a cashier down in my hotel.

Q. Are you a plaintiff—were you a plaintiff in the Charlottesville School case that was started in 1956?

A. Yes.

Q. Who were your attorneys in that case?

A. Who were they?

Q. Yes.

A. Well, we asked Mr. Hill to represent us.

Q. Who is "we"?

A. The parents of the children in Charlottesville.

Q. But you have,—you say that you and other patrons, school patrons, asked Mr. Hill to represent you?

A. We asked him to represent us.

Q. Did you ever have any personal contact with Mr. Hill?

A. No, I haven't.

Q. Well, how did you ask him?

A. Well, we asked Mr. Hill to come and give us some advice as to what to do, and he explained to us, he did come and explain to the group what we might do for our

legal rights. And therefore we sent for Mr. Hill to represent us in this case.

Q. Well, have you seen before today—have you seen Mr. Hill since that time, since he came to this meeting?

A. No, sir.

Q. You have had no contact with him?

A. No, sir.

Q. No communication with him of any kind?

A. No, sir.

Q. You haven't received a letter from him?

A. No, sir.

Q. You have made no arrangements with Mr. Hill to pay any expenses of this suit, have you, of that law suit?

A. No, he explained to us that if the N.A.A.C.P. law did not pass, that there would be a little fee.

Q. Would be what?

A. A little fee.

Q. A little fee?

A. Yes, sir. He didn't say what it would be or anything.

Q. A little fee?

A. A little fee.

[fol. 207] Q. If the N.A.A.C.P. law did not pass?

A. If it failed.

Q. Now, what law is that, do you know?

A. That was when we had this Boatwright Committee, I was here on that.

Q. You mean some laws that they passed in 1956 at the Extra Session of the General Assembly?

A. No, if the Court didn't grant the N.A.A.C.P. laws to let the children go to school mixed, then we would get the people, Mr. Hill, to represent us in the case.

Q. If the laws failed, then there would be no fee?

A. He didn't say.

Q. What was your understanding about that?

A. My understanding was that if the law said that the children could go to school together, there wouldn't be any fee, it was done with then.

Mr. Wickham: We have no further questions, Your Honor.

Cross examination.

By Mr. Hill:

Q. It was generally understood that the N.A.A.C.P. was going to finance the case, was it not?

A. Oh, yes, sure.

Q. Were you present at the meeting in the basement of the church, I don't know which church it was.

A. I wasn't there.

Q. Was your wife there?

A. I assume she was, I don't know.

Mr. Hill: That is all.

The Court: Mr. Maupin, you are excused, you are free to leave and go about your business.

(Witness excused.)

Mr. Mays: Your Honor, these are all the witnesses on this phase of the case, and I wonder whether Mr. Banks is with us now with the information we sought?

Mr. Hill: He was here, Your Honor.

The Court: I want to excuse all witnesses that want to leave except the ones you are counting on for further testimony.

[fol. 208] Mr. Mays: There was one they were going to call back after he got the authorization.

Mr. Robinson: That was James W. Harris.

The Court: The Court wants to take a recess in order for the counsel for the complainants to see where Mr. Banks is, and how long it will be before we can continue his testimony.

Mr. Mays: We had summoned also for today Mr. Griffin and Mr. Henderson. I don't know whether they are here.

Mr. Wickham: They were summoned for 2:00 o'clock.

Mr. Mays: I beg your pardon, they were summoned for 2:00.

The Court: What I want to do is excuse and let go any witnesses who have already testified and are not going to be needed. And there is one witness, Mr. Harris, that he wanted to stay. We will take a recess, and during that interval I would like for the witness and counsel to find



out whether Mr. Banks will be here. He might be downstairs some place.

(At this point a recess was taken.)

Mr. Hill: May it please the Court, we ask that a witness be retained so that we could ask one or two questions.

We would like to complete our examination of Mr. Harris now. It will take only a few minutes.

The Court: You may recall him for cross-examination.

Whereupon, JAMES W. HARRIS, was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

#### Cross examination.

By Mr. Hill:

Q. Mr. Harris, I show you a sheet of paper entitled "Authorization," and ask you to look at it and see if you recognize that paper.

A. Yes, I do.

Q. The name James W. Harris is written down there, is that your signature?

A. Yes, it is.

Q. And is this the authorization that you signed for Mr. Thompson to represent you?

[fol. 209] A. Yes, I did.

Mr. Hill: May it please the Court, we would like to introduce this, but in order that we may retain the original, we would like to substitute a copy. This is an authorization for Mr. Thompson and his associate to represent Mr. Harris' child in the segregation case.

Maybe we could just read it in the record.

The Court: Do you gentlemen have any objections to substituting a photostatic copy or any other authenticated copy?

Mr. Mays: Not the slightest, sir. We would have put it in if they hadn't, and a photostatic copy is quite satisfactory.

Mr. Hill: If the reporter will mark it, it can on the copy. I think this would be Complainants' Exhibit 1.

Mr. Wickham: If Your Honor please, the first exhibit was introduced, the transcript and complaints and answers in the Federal case would be Exhibit No. 1, would they not?

The Court: Actually this certificate with these various references on it, are 1 through 22, has never actually been identified as Complainants' Exhibit No. 1. We can do so at this time, if that is what the intention was.

Mr. Hill: Yes, sir.

The Court: We would identify this first as Complainants' Exhibit No. 1, and this other as Complainants' Exhibit No. 2.

(The certificate with references R-1 through R-22 were marked Complainants' Exhibit 1 for identification, and received in evidence.)

(The document entitled "Authorization" was marked Complainants' Exhibit No. 2 for identification and received in evidence.)

Mr. Hill: We have no further questions of this witness, Your Honor. I think he may be excused.

Mr. Wickham: We have no questions, Your Honor.

The Court: You are excused, you are free to leave.

(Witness excused.)

Mr. Mays: I understand that Mr. Banks has returned.

Mr. Hill: Yes, he is here, he is calling him now.

[fol. 210] Whereupon, W. LESTER BANKS, was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Direct examination--resumed.

By Mr. Mays:

Q. Mr. Banks, yesterday I requested you to produce certain documents. Have you been able to find them?

A. Yes, sir.

Q. Do you have them with you?

A. Yes, sir.

Q. May I see them?

Mr. Mays: Your Honor I had asked to see the documents and Mr. Banks said he wanted to explain them to me. I take it the explanation ought to be for the record. It occurred to me that when I looked at them it might be we would request the Court to indulge us until after adjournment, because we might save the Court a great deal of time by examining the documents first and determining a method to put them in evidence.

The Court: Do you want to recess to do that?

Mr. Mays: I would suggest that. And it might be Your Honor would want to carry it on until after lunch and put Mr. Banks on thereafter.

I might say this, Your Honor, because of the time element, and I know you have that under consideration. We have two witnesses this afternoon in addition to Mr. Banks, and we have one or two items of very formal proof which would require very little time. And we had thought that that would take up practically all of the day. We had not wanted to inconvenience anyone, and we had summoned Mr. Tucker, the attorney from Emporia for tomorrow. As I see it, we should conclude this case tomorrow morning, so far as the taking of evidence is concerned. And since we have made that much progress, it occurred to me that the Court might feel it wise for us to recess until after lunch, then we could go into all of these documents and determine how readily we might put the evidence in.

The Court: Do you gentlemen concur that that might be a time-saving factor in this?

Mr. Mays: May I correct one thing, Your Honor? Mr. Wickham advises me that one or two witnesses are summoned [fol. 214] moned for 2:00 o'clock tomorrow, but we will certainly conclude tomorrow.

The Court: Is it possible by any chance to get your 2:00 o'clock witnesses in in the morning tomorrow, by phone call or otherwise?

Mr. Mays: We will endeavor to do so.

The Court: If possible, you might consider it, if it doesn't work out, I am available to be here at any time.

Mr. Mays: We will get them here if we can.

The Court: Since we are recessing early for lunch, I understand, Mr. Mays, (that you are going to consult Mr. Banks in regard to this in order to expedite putting in the proof this afternoon.

Mr. Mays: With Mr. Banks, and with counsel?

The Court: With counsel, of course.

Mr. Hill: May I inquire this: I notice that Mr. Mays said he had one or two brief witnesses for tomorrow at 2:00 o'clock.

Mr. Mays: That is what I am informed, and he requested that they come at this time.

Mr. Hill: What I was wondering, I could get on the phone and try to get Mr. Tucker this afternoon; in case you can get to him.

Mr. Mays: We will try.

Mr. Hill: I thought maybe you could try to get the other witness in the morning, and it might save a half a day of the Court's time.

Mr. Mays: The question<sup>s</sup> is whether we can get those other witnesses in earlier. Mr. Tucker is for tomorrow morning. And that won't take very long.

Mr. Hill: In other words, if you can get your afternoon witnesses in in the morning, you will take Mr. Tucker.

Mr. Mays: That is right. We are trying to cause counsel as little inconvenience as possible. I fear we may impose on the Court, but that is not what we intended.

The Court: We will take a recess, then, until nine minutes after two.

(Recess for lunch was taken from 12:27 p.m. until 2:09 p.m.)

#### AFTERNOON SESSION

(The trial was resumed pursuant to noon recess at 2:09 p.m.)

[fol. 212] Mr. Mays: I would like to call Mr. Banks.

Mr. Robinson: If Your Honor please, while we are waiting, I would like to say that during the luncheon hour I made photostatic copies of the documents appearing as Plaintiffs' Exhibit No. 2, and I have shown the photostatic

copy to counsel that I would propose to put in the record in substitution of the original.

The Court: Thank you, Mr. Robinson.

Whereupon, W. LESTER BANKS, was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

Direct examination—resumed.

Mr. Mays: I think, Your Honor, that in the three quarters of an hour session since we had the recess, we have clarified much, and I think we can save a great deal of time.

By Mr. Mays:

Q. Mr. Banks, I will ask you whether or not you have prepared a summary sheet of expenses and legal fees expended by the conference?

A. Yes.

Q. Beginning with July 28, 1956, and extending through September 26, 1958, have you prepared such a sheet?

A. Yes, sir; I have.

Q. Do you have it in your hand?

Mr. Hill: Mr. Mays, will you let the record show that this was in school cases?

Mr. Mays: I am not done yet. I don't mind the interruption at all.

By Mr. Mays:

Q. I have just handed, Mr. Banks, to His Honor a sheet of paper which I believe is the original of the document you hold in your hand.

A. Yes, sir.

Q. And they have conformed, so that what you are testifying from is exactly what His Honor has. If you will look at that you will note four typewritten columns. The first column is headed "Date." Does that indicate date of payment of the individual checks?

[fol. 213] A. Yes.

Q. And the second column is "Amount," and that is the amount of the individual checks?

A. Yes.

Q. And the third column is headed "Paid to." Does that indicate the pages, the individuals?

A. Yes, sir.

Q. And the last column is headed "Description." Does that indicate the individual school cases in connection with which these checks were expended?

A. It does, sir.

Q. Now, if you will notice first, in the second column, and item under June 30, 1958, it was originally typed \$1,000, and has been changed in pencil to \$2,000. That was your change, was it not?

A. Yes, it was, sir.

Q. Will you state to the Court just why that change was made?

A. Your Honor, that was a typographical error that I discovered, and I made the change accordingly.

Q. Now, at the bottom you had also totalled in pen \$11,378.61, and drawn a line through that, and put in a new total of \$12,378.61. Was that to take care of the thousand dollar error just mentioned?

A. Yes, it was, sir.

Q. So that this sum of \$12,378.61 is an exact total of that column as corrected?

A. That is right, sir.

Q. Now, if you will look between the third and fourth columns, that is, the third and fourth typewritten columns, you have made some pen insertions after each item. Were those insertions to indicate the amount of money paid for expenses and the amount of money paid to fees?

A. They were, sir.

Q. So that as we look down that column "Expenses and Fees," they give that explanation?

A. That is right, sir.

Q. Now, if you will observe the item under June 17, 1957, after the name "Victor J. Ashe," you have \$170 expenses. I take it the rest was fee?

A. That is right, sir.

Q. And the next item "Paid to J. Hugo Madison," you have noted \$28 expenses, I take it the rest of that was fee?



A. That is correct, sir.

[fol. 214] Q. Now, if you will notice the fourth column, that is, under "Description," the fourth item, June 6, 1957, \$495.75, paid to Lawyers Publishing Company, and Holay, Court Reporter, that does not identify the case, will you state to the Court what case that was, or do you know?

A. I don't know, sir.

Q. Now, if you will look again to that \$2,000 item, under date of June 30, 1958, to Oliver W. Hill, you have an asterisk following that item. Will you please explain to the Court just what that asterisk means?

A. Yes, just a minute. If Your Honor please, the asterisk opposite the item of June 30, of \$2,000, that amount was paid on account submitted to us which included \$1,407.86 in expenses, and \$5,020 in fees. The \$2,000 item was prorated in the following manner:

\$991.01 was charged to expenses in School cases, \$816.85, expenses other than School cases, and \$592.14 is credited to fees, out of that \$2,000 item.

Q. I take it that the payees of all of the checks on this summary sheet from which you are testifying are members of the legal staff of the Conference?

A. That is correct, sir.

Q. No payments were made during this period to any other lawyers, were there?

A. No, sir.

Q. Now, do you have in hand any unpaid bills, which of course would not be reflected here?

A. I do, sir.

Q. Can you summarize for the Court, without detailing each bill, the amount of fees and expenses owed to each lawyer by name?

A. I can, sir.

Q. Will you do that, please?

A. If your Honor please, the fees and expenses as submitted are as follows:

Attorney Frank H. Reeves, expenses, \$368, and fees, \$960.

Attorney Victor J. Ashe, expenses, \$9.50, fees \$300.

Attorney J. Hugo Madison, fees, \$100.

Attorney S. W. Tucker, expenses, \$182.04, fees, \$600.

Attorney Otto L. Tucker, expenses, \$61.28, fees, \$270.

Attorney Martin A. Martin, fees, \$90.

Attorney Roland D. Ely, fees, \$90.

Attorney Oliver W. Hill, expenses, \$934.52.

[fol. 215] Q. Now, does that include all legal charges that you expect to receive from Mr. Hill?

A. No, sir, it does not.

Q. Has he indicated to you any approximation as to what the unpaid balance is as of this time?

A. No, he hasn't, sir.

Q. As far as you know, is that the total amount due the other lawyers whose names you just read out?

A. As far as I know, sir.

Q. Now, are those lawyers whose bills are now unpaid all members of the legal staff of the conference?

A. They are, sir—I beg your pardon, Mr. Mays. They are all members of the State Conference of Attorneys, Frank H. Reeves.

Q. Frank H. Reeves?

A. Frank D.

Q. And in what case was he engaged?

A. Attorney Reeves has been engaged in the Arlington County case, as far as I know.

Q. Now, this sheet from which you have been testifying is captioned "Statement of Legal Fees and Expenses in 1956, 1957 and 1958."

Does that mean that no fees and expenses were paid from the first of January, 1956 until July twenty-eight, the first item which appears on it?

A. As far as School cases are concerned, yes sir.

Q. I take it that all of these charges are School fee cases, and none of it involves committee appearances before the legislative groups and things like that?

A. That is right, sir.

Q. That is entirely independent of this?

A. That is right.

#### OFFERS IN EVIDENCE

Mr. Mays: Your Honor, we would like to mark that in evidence, please.

The Court: That will be Defendants' Exhibit D-3.

Does the Court have the original here?

Mr. Mays: Yes, sir; the Court has the original.

(The document was marked Defendants' Exhibit D-3 for identification.)

[fol. 216] By Mr. Mays:

Q. Mr. Banks, this exhibit which has just been offered in evidence was prepared by you personally, was it not?

A. Yes; it was, sir.

Q. Since you were asked on yesterday to produce the records?

A. Yes, sir.

Q. And I take it of course that the records from which this was produced are in exactly the same form they were before your original testimony was given in the case?

A. That is correct, sir.

Q. I believe you testified, or I believe you stated to me that your secretary is out sick, the person normally in charge of the records, is that correct?

A. That is correct, sir.

Q. You may remember that when you were testifying on yesterday I asked you to produce a copy or cite to us the exact reference to an address made by Mr. Hill which was published in the Sentinel. Did you have an opportunity to check for that?

A. No, I didn't, sir.

Q. Well, we are going to be here tomorrow morning. I am sorry to say, and I wonder if you could have it then?

A. I will try to get it.

Mr. Mays: Unless Mr. Hill has been able in the meantime to get it.

Mr. Hill: Mr. Mays, I know the reporter made a running account of my speech in the Sentinel, which a weekly published in Front Royal. I could determine the date of it, and I am sure that you could get a copy of it from the newspaper.

Mr. Mays: Maybe after the hearing today we could get together on that and save the Court some time.

Mr. Hill: Yes.

By Mr. Mays:

Q. Mr. Banks, on yesterday, Mr. Hill was asked a question about one document which apparently should be shown to you rather than to him. It was put in evidence, I think, marked for identification as D-2. It is a three-page document which is headed "Exhibit Hill, B-17."

I show you, Mr. Banks, a photostat of that document of three pages, which was put in evidence as Defendants' Exhibit D-2, and I will ask you to look at that, since Mr. Hill [fol. 217] could not identify it, and tell us whether or not that was something which you prepared in your capacity as executive secretary of the Conference?

A. Yes, sir.

Q. Now, if you will look at the third page—and I might say that as I understand it, the first two and a half pages were a factual summary of events that have taken place, sent out to your members, is that correct?

A. Yes, sir.

Q. To whom was this circulated, all of your branches?

A. Yes, it was.

Q. That is, all the branches in the State of Virginia?

A. That is right, sir.

Q. Was it circulated to any other persons as far as you know, any other persons or organizations?

A. As far as I know, it wasn't. It of course went to our Executive Board.

Q. Yes, of course. Now, if you will look at the third page, please, slightly below the middle, there is a subheading "IV," and the heading is "Up-to-date picture of Action by N.A.A.C.P. Branches since May 31." Under that you have a heading "A." "Petitions filed and replies," showing that a total of fifty-five branches have circulated petitions. Were those petitions total School Boards in those localities? What did you mean by petitions there?

A. They were petitions to School Boards.

Q. Now, the next subheading is "B", and that is entitled "Where suits are contemplated." Will you state to the Court what was meant by that heading "suits contemplated"? Were you referring to suits not already pending?

A. I think that refers to the fact that petitions had been presented to the School Board, and negative replies had been received.

Q. Well, is it a fair question to ask whether you meant that the suits would follow automatically if the school superintendents refuse to honor the petitions?

A. No, we didn't mean that suits would follow automatically.

Q. What did you mean? You say "Where suits are contemplated."

A. That was meant where individuals had asked for relief, and they had been denied relief, and it was an assumption that a suit might be contemplated.

[fol. 218] Q. It was your expectation that those suits would be brought if the school superintendents did not comply with your request?

A. May I say, Mr. Mays, it wasn't a request from the N.A.A.C.P., it was a request from the individual parents?

Q. Well, who was contemplating the suits? Did you have in mind the individual parents were contemplating the suits?

A. Yes, that it was a contemplation.

Q. And that the N.A.A.C.P. would not be involved?

A. The N.A.A.C.P. would not be involved any more than it would normally be.

Q. Well, normally—let's get what we mean by that—what was normal for them?

A. By that I mean that if requests had been made to the N.A.A.C.P., in all probability financial aid would have been forthcoming.

Q. Well, the probability would be a certainty, wouldn't it, if in those suits the parties were insisting on doing away with integration in the schools, it would be a certainty then, wouldn't it?

A. That aid would be forthcoming, sir?

Q. Yes.

A. If the chairman of the legal staff and the president concurred in recommending to the Conference, aid would be forthcoming.

Q. Now, you will notice in the next subheading, "C",

"Readiness of lawyers for legal action in certain areas."  
What was meant by that observation?

A. By that was meant that if there were individuals who desired to bring action, then the N.A.A.C.P. was willing to offer financial aid.

Q. Now, you mentioned in certain areas, what was the significance of that adjective "certain"?

A. Well, I don't actually recall, Mr. Mays, what the significance was, but I imagine that there were certain areas that would have made the request more readily than other areas.

Q. Well, you were ready to go in any area, were you not, as long as the people bringing the suits were conforming to the N.A.A.C.P.'s established policy?

A. If that were recommended, we were ready to offer financial assistance.

Q. Then the word "certain" had no significance insofar as your willingness was concerned?

A. I don't recall that it had any particular significance.

[fol. 219] Q. The next sentence states "Selection of suit site reserved for legal staff."

What was the meaning of that particular sentence?

A. I actually don't know what I meant by that, Mr. Mays.

Q. It seems fairly plain to me, but I wondered if you had any independent recollection?

A. No, I don't.

Q. It means you were leaving it to the lawyers, didn't it, to pick the places where the suits would be brought?

A. Well, I think it did in that particular—looking at it from that standpoint.

Q. Well, look at it from any other standpoint you like, wouldn't it be the same thing?

A. Well, it seems to me, Mr. Mays, that that might have a very definite connection with the fact that before N.A.A.C.P. would offer assistance, then the situation would have to be concurred in by the chairman of the staff and the president. So that might be what that meant.

Q. Yes, but it didn't say that here. What it said here was that the legal staff would be the one that picked the site of the suit.



A. Maybe that was a poor choice of words on my part, sir.

Q. It seems a rather clear choice to me, but I wondered if there was any other construction in your mind?

A. I don't think so.

Q. If you will look to the next line it states, "State legal staff ready for action in selected areas."

What did you have in mind with reference to selected areas?

A. That would be back to my first question, I mean by that my first answer, sir, if the Conference concurred in supporting the request, that would have been a selected area.

Q. Well, is it a fact that after the decision in the Brown case in 1954, the policy of the N.A.A.C.P. and its affiliated associations, that is, the Conference and branches here in Virginia, it had as a fixed policy to go into cases where integration in the schools was to be accomplished, and segregation to be avoided, that is quite true, isn't it?

A. Yes, that is true.

Q. And isn't it true that after that decision, when the course of action seemed clear from the standpoint of the Conference of branches, that it was expected that suits [fol. 220] would be brought anywhere where the parents wanted to do away with a segregation in the Schools?

A. Would you mind stating that again, sir.

(The question as recorded was read by the reporter.)

The Witness: That is correct, sir.

By Mr. Mays:

Q. Going back to the financial arrangements, did you have occasion at any time, or did the branches have occasion, Conference of branches have occasion at any time to reimburse parents for any fees or expenses advanced in connection with any school case?

A. No, sir, not to my knowledge.

Mr. Mays: Your Honor, I asked on yesterday that this be put in for identification, since it had not been identified. I ask now, sir, that it be marked as an exhibit.

The Court: We referred to it on yesterday as Defendant's Exhibit D-2, and subject to its identification made by the witness who prepared it. It is now formally designated by the Court as Defendants' Exhibit D-2.

(The document previously marked Defendants' Exhibit D-2 for identification was received in evidence.)

By Mr. Mays:

Q. Mr. Banks, I show you a photostat of a document which has at the head, "Exhibit Hill, B-14, September 13," and I can't make out the year—I take it to be 1957—and it is a photostat of a letter dated July 1st, 1953, addressed to Mr. Jones B. Smith, 22 Court Street, Hampton, Virginia, and signed—or rather, it is not signed, but obviously was prepared for the signature of the secretary. I ask you whether or not that was a letter which was prepared by you?

A. It appears to be, sir; this copy is rather indistinct.

Q. Take a good look, isn't that a letter you wrote?

A. I say, it appears to be. Isn't your copy a little more legible?

Q. Mine is the same. And it was before one of the State committees that this came out. And all I have, therefore, is the photostat?

A. Yes, sir.

Q. Now, was that written in response to a request for [fol. 221] help on the part of the Conference from Jones B. Smith, financial help?

A. It appears as if it were.

Q. I will call your particular attention to the fourth paragraph in which you say "not having details of your particular case, I cannot properly classify it. However, from the content of the first page of your letter, it is apparent that your particular case will not fit any of the above-mentioned limitations."

Will you state to the Court in general what the character of that problem was?

Q. Would you re-state your question, sir.

Mr. Mays: Will you please read it.

(The question, as recorded, was read by the reporter.)

The Witness: I don't recall what the particular problem was that Mr. Smith was complaining of, sir.

By Mr. Mays:

Q. Well, this letter of July 1st, 1953 did in any event reflect the policy of the Conference branches?

A. As it was stated in the third paragraph.

Q. Well, as stated in the letter as a whole, didn't you have some statement in the second paragraph, too?

A. Yes, we did, sir.

Q. In other words, the letter, to the extent that it went, correctly reflected the policy of the Conference?

A. I would think so, with perhaps an exception of paragraph 5.

Q. Well, will you state to the Court what exception that is?

Do you mean the exception as stated in the letter, or that you have a reservation in your mind?

A. No, I don't have a reservation in mind, but in reading the letter, reading the last paragraph, it seems to say that the N.A.A.C.P., the Virginia State Conference, was obligated to appoint an attorney. I don't think that was the policy, or that it has ever been the policy. That was an error.

Q. No, you misread your letter. The letter says the State of Virginia is obligated to appoint an attorney.

A. Oh, yes—

Q. You are speaking obviously of a public defender who [fol. 222] would be appointed for someone who didn't have funds.

A. I see. It was indistinct, I thought that was the Virginia State Conference.

Q. So that the letter then does correctly reflect the policy of the Conference?

A. I would say so.

Mr. Mays: If Your Honor please, would you like to mark that in evidence?

The Court: Yes, that may be marked Defendants' Exhibit D-4 for identification.

(The document referred to was marked Defendants' Exhibit D-4 for identification and received in evidence.)

By Mr. Mays:

Q. During the course of your testimony, Mr. Banks, you referred to rendering financial aid to litigants. Did that mean just money, or did it mean furnishing the services of the attorneys as such?

A. Oh, it meant furnishing the services of attorneys as such.

Mr. Mays: Your Honor, that is all we have of the witness at this time. We don't wish to excuse him from the case because we still have one or two unfinished items. But we are done for the present, and certainly we would have very little more. Part one depends upon the introduction of other testimony which is not yet forthcoming.

Cross examination.

By Mr. Hill:

Q. Mr. Banks, referring back to the memorandum which was designated Defendants' Exhibit No. 2, I ask you, can you tell from the document when it was prepared?

A. I don't see anything that would indicate when it was prepared, Mr. Hill.

Q. Well, in view of the fact that you refer to things during the school term 1955-1956, is it not a fair assumption that it was prepared at least the latter part of 1955 or early 1956, on the third page in "I" I have reference to.

A. From that statement it would appear that it was prepared along that time.

[fol. 223] Q. Now, directing your attention to the latter part of 1955, after the Supreme Court's decision implementing the decision of May 17, 1954, I ask you, was it not a fact—

Mr. Mays: I object to the form of the question, Your Honor.

Mr. Hill: Your Honor. I am asking some questions on cross-examination now, I think I am entitled to ask the questions in the form I wish.

Mr. Mays: He was brought here as their witness, Your Honor—we certainly ought not to have any difficulty about it, for he certainly knows how to ask the questions properly, he has been doing it a long time.

The Court: Objection sustained.

By Mr. Hill:

Q. What was the state of feeling among Negroes after that decision?

A. You refer to the implementation decision of 1955?

Q. Yes.

A. I think it was generally felt by those persons that I came in contact with, as well as others, that there would be ready compliance with the decision throughout the state.

Q. During the course of your duties as Executive Secretary of the Virginia State Conference, will you state whether or not you know, or whether it was called to your attention, the amount of interest among Negroes in desegregation?

A. Yes. In my capacity as Executive Secretary, and as a lay citizen, it was increasingly evident that the vast majority of Negroes in Virginia were vitally interested in desegregation in the public schools.

Q. After the Governor and State Board of Education had declared its policy to be the continuance of segregation, was it contemplated that there might be a large number of suits?

A. Contemplated by whom, sir?

Q. Well, the people with whom you came in contact.

A. I think that the people, that is the Negroes of Virginia, were anxious to have the schools and the school officials to comply with the law, and that meant exhausting all of our legal rights; I suppose that is what it would mean.

Q. Let me ask you this. Considering the interest that had been manifested, was there any feeling among the State [fol. 224] Conference officials that they may have more requests for assistance than they could reasonably furnish?

A. Yes, there was a definite feeling on the part of the State Conference officials, because of the widespread interest in compliance with the law, that there would be more requests than the Conference could reasonably handle.

Mr. Hill: That is all.

Re-direct examination.

By Mr. Mays:

Q. You are saying that the Conference expected there would be more requests than they could reasonably handle. What do you mean by "requests"?

A. The request for assistance.

Q. Of what sort, with the superintendents of the schools, or in the courts?

A. Well, I imagine it would have been both, perhaps.

Q. I gathered the burden of the examination a moment ago was to show that compliance was to be expected in Virginia as of the time this memorandum was sent out. Did you indicate in your reply that that was your understanding, that the people in Virginia were going to comply?

A. We confidently expected Virginia to comply with the decision, sir.

Q. As of the time this memorandum from which you are now testifying was issued?

A. We still had hoped that Virginia would comply.

Q. I call your attention again to the third page under heading "IV," subheading 2, where it was said, and I quote, "Petitions have been filed in seven counties. Graduated negative response received in all cases."

So that all said no, didn't they?

A. To a degree.

Q. Well, had any of them to any degree said yes, they were going ahead and comply?

A. I don't know whether any of these had said it, sir, but there were a number of instances in Virginia where the school authorities had indicated that they would comply with the decision.

Q. Well, you had at least several here, didn't you, that said no, and you were on notice at that time?



[fol. 225] A. That there were several who had said no in varying degrees.

Mr. Hill: No further questions.

The Court: Step down, Mr. Banks, please.

Did I understand counsel to say that they expected to confer before the day was out with regard to this address by Mr. Hill that appeared in this Sentinel?

Mr. Mays: Yes, sir; we thought that he might be able to put his hand on it and save time.

The Court: Before we conclude for the day, then we will get back on that and see within what time that is expected to be forthcoming. In view of the fact that that first request was made through Mr. Banks for that material, he is now excused, subject to recall.

Mr. Mays: We would like to have him back in here tomorrow morning, because there are one or two documents which may come in on which we will need his testimony.

The Court: Subject to those qualifications, may Mr. Banks be excused for the rest of the day until 9:00 o'clock tomorrow?

Mr. Mays: Yes, sir.

(Witness temporarily excused.)

Mr. Mays: We would like, sir, to call Edwin B. Henderson.

The Bailiff: He doesn't respond, Your Honor, to a call.

Mr. Mays: We don't know whether he has been served, sir; the offices are closed, and they have no report on him, and probably will not until the first thing in the morning.

The Court: He would be a local witness?

Mr. Mays: No, sir; Falls Church, Virginia.

The Court: Well, with the Clerk's offices closed, I guess we will have no way of knowing. We will just have to reserve the question for tomorrow, I suppose.

Mr. Mays: I should like to call Mr. L. F. Griffin. Whereupon,

L. FRANCIS GRIFFIN, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mays:

Q. Will you give your full name to the reporter.

A. L. Francis Griffin.

[fol. 226] Q. And your address.

A. 116 Ely Street, Farmville.

Q. And I believe you are a minister?

A. That is right.

Q. Where are you?

A. Baptist Church, Farmville, Virginia.

Q. When you were living there, were you not, in 1951, at the time the School Segregation matter began to develop?

A. That is right.

Q. Do you recall having occasion to send out any kind of communication to parents of children in that area?

A. Yes, I recall having sent them.

Q. I don't have a copy except as it appears in another hearing, but I believe you testified before the so-called Thompson Committee some months ago?

A. That is right.

Q. And I think the question then was propounded to you as to whether you had put out such a letter, and it was put in the record. I will show to you in Volume II of the transcript of that hearing what purports to be a communication sent out by you, which begins on page 199 and extends over through the first line of page 200, and ask you whether or not that is a correct copy of the letter which you sent out?

The Court: We will take a five-minute recess.

(At this point a five-minute recess was taken.)

Mr. Mays: Should we proceed without Mr. Robinson?

Mr. Hill: I think you can go ahead.

Mr. Mays: That is agreeable with me.

The Court: Let us let the Sheriff check on him, Mr. Mays.

Mr. Mays: All right, sir.

The Court: Here he is now.

Will you proceed.

By Mr. Mays:

Q. Mr. Griffin, I show you Volume II of the transcript of the Thompson Committee hearing beginning on page 199, I believe it is, and there is set forth what purports to be a letter which you have addressed to parents in the Prince Edward County. You have had an opportunity to look at that transcript, have you not?

A. That is right.

[fol. 227] Q. And that does correctly state what you had in your letter?

A. As far as I can recall.

Q. Well, you have no reason to think that that isn't a correct copy?

A. No.

Mr. Mays: Your Honor, I don't want to remove pages from that transcript. It occurred to me, sir, that either the witness might read the letter directly into the record, or I will read it and the witness might follow it and state whether or not I have correctly read from the record. If you gentlemen are satisfied with the copy, I will put that in.

Mr. Robinson: If you tell us it is O.K., that is all right with us.

Mr. Mays: I will tell you I think so, I am not a witness.

Mr. Robinson: It is all right, Mr. Mays.

Mr. Mays: Your Honor, counsel has suggested on our side of the table that we read it into the record rather than put it in as an exhibit, if it is agreeable, and if the witness will follow me and let me know at the end whether I have read it correctly—or he may if he likes—shall I read?

"This letter is relative to the emergency at the Robert R. Moten High School.

"The National Association for the Advancement of Colored People has been requested to take action in this matter, and its attorneys are now working on the problem. You are requested to keep your children absent from the Robert

R. Moten High School until you are further advised to send them back to school.

"In making this request we are following the advice of our attorneys, and no changes should be made in our plans until our attorneys advise us to make them."

"We must all cooperate fully to get results, and this request must be followed at all costs."

"An important emergency meeting of the County-wide PTA will be held Thursday evening, May 31, 1951 at 8:00 o'clock p.m., at the First Baptist Church, South Main Street, Farmville, Virginia."

"It is important that as many parents and patrons as possible be present at this important meeting. Our attorneys, Hill, Martin and Robinson, will be present to meet with you and discuss the procedures necessary for securing our Constitutional rights."

[fol. 228] "It is necessary that all of us support the efforts being made to get our just rights."

"We shall expect you to be present and bring others with you."

"Remember, the eyes of the world are on us. The intelligent support we give our cause will serve as a stimulant for the cause of free people everywhere. We shall expect you to comply with our request, and to be present at the First Baptist Church on Thursday evening, May 3rd, at 8:00 o'clock p.m."

"Sincerely yours, L. F. Griffin, Coordinator of N.A.A.C.P. for Prince Edward County."

Is that a correct reading of your letter?

A. Yes.

Q. Now, will you state briefly to the Court how it was that you decided to write that particular letter?

A. I think it was in order to stimulate interest in the meeting.

Q. I take it that it was your position and not someone else's?

A. That is right.

Q. Did anyone request you to write the letter?

A. No.

Q. I noticed in it, and I think it must be an error that you

referred to a meeting to be held on Thursday evening May 31st, 1951. Do you recall whether the suit in Prince Edward had already been brought then?

A. No, I don't.

Q. So when the letter went out you can't say for certain whether the litigation had actually begun?

A. No.

Q. Had you been in communication with any of the students of Moten High School or the parents of the students of the High School before the letter went out?

A. Yes.

Q. Are you familiar with the strike which students had there at Moten High School?

A. Yes.

Q. Did you have occasion to talk with those students?

A. Yes, I did.

Q. Did they ask your advice?

A. Yes, they did.

Q. And what advice did you give?

A. Well, I can't point out specific instances, I mean, but [fol. 229] I do recall that I gave them advice on any number of occasions.

Q. We expect that. But I wonder, did you suggest at the time of the strike what they should do about legal representation?

A. No, indeed.

Q. There was no discussion between you and the children concerning the employment of lawyers?

A. No, indeed.

Q. No discussion between you and the parents of the children on the employment of lawyers?

A. No, indeed.

Q. So insofar as their contact with counsel was concerned, you had nothing to do with it at all?

A. That is right.

Q. I notice that you signed the letter as coordinator of the N.A.A.C.P., of Prince Edward County. Did you have communication with the branches or any other society affiliated with N.A.A.C.P.?

A. Association did you say? I didn't hear your question.

Q. Let me state it again, maybe it wasn't a good question. I say, I notice here that you signed this in your capacity as coordinator of N.A.A.C.P. for Prince Edward County. Did you confer with any other persons who was affiliated with N.A.A.C.P., or its affiliated organizations concerning the subject matter of the letter?

A. No, as I recall, it was hastily done, and I did it on my own accord.

Q. I mentioned that word "coordinator," what does that mean? Is that actually what you had?

A. Well, in that particular county, you see, it is divided into six units, a unit in each district.

Q. You mean there are six different chapters—

A. No, no, units.

Q. I see. What is a unit?

A. It is one branch, Prince Edward County branch.

Q. And you have six units in the branch?

A. That is right.

Q. And you are the coordinator for all six?

A. That is right.

Q. And that is an official title that you have?

A. That is right.

Q. And who confers that?

A. Well, I mean that it was the title between the secretary and myself.

[fol. 230] Q. That is something that you decided on?

A. That is right.

Mr. Mays: No further questions.

Mr. Hill: We have no questions, Your Honor.

S. W. TUCKER, was called as a witness, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mays:

Q. Will you please give the reporter your full name and address.



A. I am S. W. Tucker, of 111 East Atlantic, Emporia, Virginia.

Q. And state, please, your business or profession.

A. I am an attorney at law.

Q. Qualified to practice in Virginia?

A. Yes.

Q. And since what time?

A. 1934, I believe it was.

Q. Do you have any connection with the legal staff of the N.A.A.C.P., that is to say, the conference of branches of Virginia?

A. I am a member of the legal staff of the Virginia State Conference of the N.A.A.C.P.

Q. When did you become a member of the legal staff?

A. I don't recall exactly; it was possibly in 1947 or 1948 or thereabouts.

Q. Can you recall how it was you become a member of the staff?

A. I beg your pardon?

Q. Can you recall how it was you became a member of the staff?

A. Well, I have always had a tremendous interest in Civil Rights litigation, as a matter of fact I engaged in some of it even before I was a member of the legal staff, even before [fol. 231] World War II interrupted by legal practice, and so I suppose it was no problem at all for my being nominated and taken on the legal staff.

Q. I am not suggesting in the slightest that there was any problem, but I wondered how it came about, either you spoke to somebody or somebody spoke to you, and I wonder just how the relationship was established?

A. To get the detail on it, to be specific about that would be very difficult, Mr. Mays. The lawyers that were working in this program were friends of mine, some of us met in college, and our interests are known, but just as to the mechanics of it I wouldn't be able to say.

Q. What did you understand your duties to be as a member of the legal staff?

A. In a nutshell, I would say it would be to do whatever was necessary to advance our program. That would entail a study of cases, preparation of cases, trial of cases.

Q. Do you have any other connection with the N.A.A.C.P. or any of its branches other than membership in the N.A.A.C.P., which I suppose you have?

A. I have membership in the N.A.A.C.P., I have no office as such, other than a possibility, I am never certain of it, at least I function as such, whether I am officially named as such, as a member of the Executive Board or Committee of the legal branch.

Q. As a member of the Executive Committee of your legal branch—which I think is the Greenville Branch, is that correct?

A. That is correct.

Q. —what are your duties there?

A. Actually the Executive Committee might function in the absence of a meeting of the branch. As a matter of fact, I don't even recall a specific committee meeting, a formal specific committee meeting, for the last two or three years, that is the reason I express doubt as to whether I am officially named as such.

Q. I think you have a brother on the legal staff, too, do you not?

A. Otto L. Tucker.

Q. And when did he become a member of the legal staff?

A. A year ago, I think.

Q. Was that at your suggestion, or do you know whose suggestion that was?

A. I don't recall at whose suggestion, I am sure it was not at my suggestion.

[fol. 232] Q. Before you became a member of the legal staff, were you employed by the Conference in any of its litigation?

A. By the Conference?

Q. Yes.

A. I do not recall that I was ever employed by the Conference; I do recall being employed on doing some work at the instigation of our local branch.

Q. Before you became a member of the local staff were you compensated by the Conference for any of the work you did in connection with Civil Rights?

A. I think not.

Q. Were you compensated by the local branch?

A. I wouldn't want to positively say one way or another. I probably was, it has been so long ago, and everything was of such little consequence, it turned out there was so little I could do about it—it was quite serious, but I wouldn't want to at this time say whether I was or wasn't.

Q. Did they at any time take up collections for the benefit of people who had Civil Rights problems for the payment of counsel at your Greenville local branch?

A. I don't recall any that the Greenville branch itself was interested in. I can remember some times probably for some other defense, but I don't recall any collections in which I was personally interested.

Q. Do you remember taking up collections for local defense at the Greenville branch?

A. I will say raising funds, yes; whether it was done in the way of taking up collections, I don't know.

Q. I don't mean to use a disparaging term, what I am trying to get at in one way or another, is didn't the Greenville branch raise funds in order to aid people in defenses in criminal actions?

A. The Greenville County branch raises funds and makes contributions to the State Conference for the legal program just like all the branches do.

Q. Do they make any direct contributions to the defense of people charged with crime?

A. Direct contributions?

Q. In other words, if somebody is in trouble in Greenville County, does the Greenville branch ever raise money for his defense, whether the money is paid directly to him or his counsel?

A. I think I understand your question. I am trying to recall. As a practice, I can definitely say no.

Q. You mean as a regular practice?

[fol. 233] A. As a regular practice, no.

Q. But you don't know in specific instances whether they did or not?

A. There was one case that was handled in Greenville in which I wouldn't want to say whether the branch did or not, it is possible that the branch made some direct contribu-

tions. That is the only exception I recall, that is the reason for my hesitancy.

Q. What was the name of the person involved there?

A. That was the case Jodie Bailey.

Q. J-o-d-i-e B-a-i-l-e-y.

A. That is right.

Q. Were you counsel for him?

A. I was counsel.

Q. Was he a man charged with murder in Greenville County?

A. That is correct.

Q. Can you fix the approximate time of the commission of that offense?

A. It has been something like five or six years ago, maybe more.

Q. I think it has been several years ago, maybe forty-five or fifty. When did you first hear of the commission of the crime?

A. I suppose about fifteen minutes after it happened.

Q. What day of the week, do you recall?

A. I think it was a Saturday.

Q. And what time of day?

A. Oh, something like three or four o'clock in the afternoon. It happened right in front of my office.

Q. And you heard about it about fifteen minutes later. You were employed in the case?

A. Yes.

Q. And by whom?

A. By Bailey's wife initially.

Q. Do you remember her name?

A. I do not.

Q. Well, how long after the offense was it when she made contact with you?

A. Possibly the same day, I am not sure, within twenty-four hours or less than twenty-four hours.

Q. When did you first begin to function in the case?

A. After she contacted me.

Q. It was not within minutes after the crime, then, it was hours or days afterwards, is that correct?

A. Within twenty-four hours—I say I heard about it

[fol. 234] within fifteen minutes, but I didn't start working within fifteen minutes.

Q. That is what I am trying to develop. When was it that she got in touch with you for the first time?

A. To the best of my recollection it was on the same day.

Q. And you don't know how much later it was after the commission of the offense?

A. No, it could have been a couple of hours, it could have been longer.

Q. Of course, it could have been two or three months?

A. I know it wasn't two or three months, because I know I was working on the case within twenty-four hours.

Q. Now, what did you first do in connection with the case?

A. Well, the first thing I did was try to contact my client, who had been spirited away from the county because the sheriff feared that there might be a lynching party.

Q. Well, where was he taken?

A. To Lawrenceville.

Q. And when did you first see him?

A. I believe it was on the following Monday; I think I spent Saturday afternoon and Sunday and part of Monday trying to find out where he was.

Q. Did you make any effort to have him removed there for his safety?

A. No, I said, I spent that time trying to find out where he was.

Q. Now, did anyone else see you in connection with employing you? Was it just the wife who saw you?

A. Before I saw him?

Q. Yes.

A. That is all.

Q. Was anyone accompanying her when she talked to you about it?

A. No, not that I remember—you are taxing my memory on something five or six years ago.

Q. I don't expect you to stand an examination on every possible thing, but I am trying to develop it as far as your memory goes.

A. If someone was with her, it was some member of the family or a close friend.



Q. Where did you meet her, at your office?

A. At my office.

Mr. Carter: This is all very interesting, it seems to me, [fol. 235] but it is going very far away, and it is not before the Court.

Mr. Mays: The witness has indicated that this was one of the cases in which the Conference participated fundwise, and I am trying to develop how he became counsel in the case and get the entire background. This is the one case, Your Honor, in which he was connected with the Conference, and therefore I would like a few minutes to develop what this case is about. I think it is quite relevant insofar as these particular statutes are concerned.

Mr. Carter: If the Court please, I think that there is a possibility in terms of relevancy with respect to Mr. Tucker's connection with this case in respect to the Virginia State Conference, but it seems to me that we have not touched upon the connection with the Conference for the last fifteen minutes in terms of questions, and how Mr. Tucker was engaged, and who accompanied Mrs. Bailey or whatever the person's name was, seems to me to have no relevancy in terms of this at all.

Mr. Mays: Our position is simply this, Your Honor, and we are not going into this because it is interesting to opposing counsel, we are going into this because here is a specific case which has been brought to our attention by the witness, and of which he had plenty of knowledge, in which he has indicated that the Conference itself came in as an interested party in order to contribute to the cost, and we are trying to develop how that case was created and exactly how the Conference functions in connection with this type of case. It comes squarely under the interpretation of the statute on running and capping, it comes squarely under the one that has to do with maintenance. And if we interpret those statutes, it has to do with how the corporation functions.

Your Honor will remember that at the very outset in counsel's position it was stated first of all that N.A.A.C.P. and its affiliates were not bound by those statutes, and if they were, they were unconstitutional. The first contention they make is that the statutes do not apply to them, and I



want to show the Court they do, and I am taking this as a case. There are a number of others I could go to, but I am taking just this particular one that the witness himself has adverted to.

The Court: Insofar as any details of the case, of course, the Court would sustain any objection of immateriality in regard to that, but insofar as anything leading to his employment in it with relationship to the Virginia Conference with him or with the party involved would be admissible.

Mr. Carter: I will take an exception.

[fol. 236] By Mr. Mays:

Q. Did you ever send any bills for services or expenses to Bailey or his wife?

A. When I was first employed in the case Bailey had his week's pay check, as I recall, something like \$45.00 that was paid to him.

Q. He endorsed that over?

A. Yes. I don't recall that I ever billed him and his wife since, because frankly, it would have been a waste of postage.

Q. Your compensation, therefore, came either from the branch or from the Conference, is that correct?

A. What compensation I drew—I don't actually think I was compensated, I may have called on the branch or Conference for expenses. That case went to the Court of Appeals twice, as I recall.

Q. I am not speaking of whether you feel you were adequately compensated, but you did receive some payment?

A. I received something from either the Conference or the branch or maybe both, yes.

Q. In this particular instance, was there a meeting of the branch in order to seek funds in order to aid in the defense?

A. I don't recall any special meeting for that purpose, no.

Q. Now, you are in some of the school cases, are you not?

A. That is correct.

Q. Which ones?

A. Of record, in the Charlottesville and Warren County.

Q. Did you go into the Warren County case initially at the time it was first brought?

A. Yes.

Q. At whose instance was that?

A. Mr. Hill.

Q. Did you go into the Charlottesville case at the time that was first brought?

A. I think I am of record on the initial papers in that.

Q. And who brought you into that?

A. Mr. Hill.

Q. Did he tell you why?

A. No more than a lawyer would associate another lawyer in a case.

Q. I understand. Well, you were living at Emporia?

A. That is correct.

Q. And you have the members of the legal staff scattered over the state, and I wonder if he gave you any particular explanation as to why you were brought into the Charlottesville case?

A. No, Mr. Mays—the relationship between Mr. Hill and myself dates back so far and so long and has been so pleasant and so profitable, that he wouldn't have to tell me why he would want me to do anything.

Q. I am sure it has been pleasant and profitable, and I am wondering if there was any particular statement made at the time of your employment as to the reason for bringing you in from Emporia?

A. Of course, I don't know whether it was so profitable. No, I couldn't say there was any particular reason for it, Mr. Mays.

Q. You were getting the \$60 per day per diem, of course, for services rendered?

A. I don't think that I have gotten any of it yet.

Q. Well, you understand you will get it, from the Conference?

A. That is the possibility, yes.

Q. Isn't there on the part of a man named Tucker a very reasonable expectation of that?

A. There is the hope, sir.

Q. Do you know why you were brought particularly into the Warren County litigation?

A. Well, I can recall Mr. Hill and I worked out the papers, deeds, memorandum, and what have you. I myself feel that I was brought into it because it was something to which I could contribute—I like to feel that way anyhow—as a matter of fact, unless I feel there is something I can contribute, I don't bother to submit a bill.

Q. I can appreciate that. But what I have in mind, and you can realize this, that Warren County gets pretty close to the Arlington and Alexandria area, and already counsel in Richmond are in that area, and I wondered if there was any particular reason that you know of that you were brought up from Emporia to be associated with counsel there?

A. Mr. Mays, that wasn't strange, even since I have been in Emporia, I have handled cases in various parts of the state, it is known that I just have a willingness to do whatever is necessary to be done, where I can do it.

Q. Now, you are speaking of general law practice, aren't you, not as being associated with the staff of the Conference?

A. That could be both.

Q. Well, is it both? In other words, did you go all over the [fol. 238] state as a member of the staff, in cases other than the school cases?

A. I see what we are getting into—

Mr. Carter: I would like to raise an objection to that. I think that the question as to the reasons why Mr. Tucker came to a case or whether he has been all over the state, it seems to me, if Your Honor please, that has nothing to do with the issues before this Court. The issue before this Court is in terms of whether the reach of the statute, whether or not the N.A.A.C.P. brought counsel from California, or why they brought him down has nothing to do with the issues before this Court.

The Court: Do you gentlemen care to be heard on that objection?

Mr. Mays: No, sir, I think that the purpose of the question is perfectly clear. I don't care to pursue it indefinitely, Your Honor.

The Court: Well, I overrule the objection at this stage. You may continue.

Mr. Mays: Will you repeat the question, Mr. Reporter.  
Mr. Carter: I note an exception to that.

(The question, as recorded, was read by the reporter.)

By Mr. Mays:

Q. May I clarify that, in connection with litigation, I am not talking about the speeches you made, I am not interested in that, but just in litigation.

A. My answer now is going to involve cases that I have handled in different parts of the state.

Q. I am not asking you to go into the detail in any of them, I want to know whether or not that is a fact.

A. Whether what is a fact, sir.

Q. Whether or not you went about in other parts of the state as a member of the legal staff in handling cases independent of the school cases?

A. Yes, I have handled cases in other parts of the state as a member of the legal staff, yes.

Q. And compensated by the Conference for that service?

A. I wouldn't want to pinpoint that I was compensated by the Conference, I may have been compensated by a local branch, I may have been compensated by the Conference—[fol. 239] well, if they were handled for the N.A.A.C.P., either by the Conference or the local branch—or I may not have been compensated at all.

Q. Since we don't know whether you were compensated at all we won't pursue those cases. I will ask you one thing more about Jodie Bailey. Was there more than one trial?

A. Jodie's case went to the Court of Appeals, was reversed, and went back to the Circuit Court of Greenville County and was tried, went to the Court of Appeals again, a petition of certiorari was denied, habeas corpus was sought from the U.S. District Court, and an appeal from the refusal was taken to the U.S. Court of Appeals, and the District Court was sustained, and the U.S. Supreme Court denied certiorari.

Q. Now, who controlled that litigation?

A. I did.

Q. You did? Were you instructed to take those several steps by the Conference, by the local branch, or by Jodie Bailey?

A. I can't say, I was instructed by any of them. I advised Bailey, of course, and naturally a man in prison for life would consent to anything his lawyer is willing to do for him, but so far as anybody else instructing me, no.

Q. Were you told by anybody, independent of any advice you may have given, were you told by somebody what course of action to pursue after you had given that advice?

A. I had Bailey's authority, if that is what you are speaking of.

Q. That is what I am asking, in other words, Bailey instructed you to do it in that way?

A. Bailey trusted his lawyer to do whatever his lawyer could do to get him out of trouble for good.

Q. My only question is, what you did was pursuant to the instruction or the say-so or whatever general words you want to use that came from Bailey?

A. On the consent of my client, yes.

Mr. Mays: All right.

No further questions.

The Court: Do you care to cross-examine?

Mr. Hill: No, we have no questions.

The Court: Is there any reason why Mr. Tucker cannot be excused?

Mr. Mays: No reason at all.

The Court: All right, Mr. Tucker, you are excused.

[fol. 240]

#### STIPULATION AS TO DEFENDANTS' EXHIBITS

Mr. Mays: We can use the Court's time with stipulations.

Your Honor, Mr. Carter and I are prepared to enter into a stipulation, which I shall state, and trust it is agreeable the way I stated it to him.

There is a publication put out by the N.A.A.C.P., called "The Crisis." And there is an article in Volume 28 beginning on page 228 which is entitled "The Virginia School Fight—a Clarification."

I have four of these, Your Honor, and I can put them in as four exhibits, or one, as Your Honor pleases.



The Court: Is it contemplated that they would be read in the record?

Mr. Mays: No, we contemplated putting them in as exhibits and saving the Court's time.

The Court: Let us make them separate exhibits.

Mr. Mays: Very well. This will be Defendant's Exhibit D-5.

(The volumes were marked Defendants' Exhibit D-5 for identification and received in evidence.)

Mr. Mays: I call attention to the fact that that is an article over the signature of Spotswood W. Robinson, III, Regional Special Counsel for N.A.A.C.P., southeast region, and dated January 29, 1951. I think Mr. Robinson will state for the record that that was an article prepared by him.

Mr. Robinson: I wrote that as a letter, if Your Honor please, as I recall, to the editor of "The Crisis," and it is at least a substantial copy of it, I think one word at least was misprinted, but I will stipulate that I wrote that letter.

The Court: Thank you.

Mr. Mays: Then in "The Crisis," the same volume, that is, Volume 28, at page 5 there was an article with the caption, "Virginia Schools: A Study in Frustration," written by Marvin Caplan, an article to which Mr. Robinson's letter just put in evidence referred. We will ask, sir, that that be marked in evidence as Defendants' Exhibit D-6.

The Court: D-6.

[fol. 241] (The article referred to was marked Defendants' Exhibit D-6 for identification and received in evidence.)

Mr. Mays: In the same volume of "The Crisis," Volume 28, beginning at page 475, there is a publication of "Resolutions adopted by the Forty-Second Convention of the N.A.A.C.P., at Atlanta, Georgia, June 30, 1951," and I ask that that be marked as Defendants' Exhibit D-7.

The Court: It will be so marked.

(The document referred to was marked Defendants' Exhibit D-7 for identification and received in evidence.)

Mr. Mays: And in Volume 62 of "The Crisis," beginning at page 339, there is a publication of what is described in the



caption as "Directives to the branches adopted by emergency south-wide N.A.A.C.P. Conference."

And I ask that that be marked as Defendants' Exhibit D-8.

The Court: What was the volume and page number?

Mr. Mays: The volume is 62, and the beginning page is 339.

The Court: It is received as Defendants' Exhibit D-8.

(The document referred to was marked Defendants' Exhibit D-8 for identification and received in evidence.)

Mr. Mays: Your Honor, I should like to have marked in evidence a printed report of the meeting of the Board of Directors of the National Association for the Advancement of Colored People, held on October 9, 1950, this has been printed as "Appendix 8," in a state document, and is Appendix 44 of that document, the title of which is, that is of the document, it is, "Report of the Committee on Offenses against the Administration of Justice," and I understand that Mr. Hill is prepared to stipulate that as a part of the record.

Mr. Carter: So that the record will be accurate, that is an excerpt from the minutes of the Board of the particular date that you referred to.

Mr. Mays: Very well, then I will call that excerpt, if Your Honor please.

I call Your Honor's attention to the fact that on the reverse side of the page as "Appendix 7" is a letter of Mr. Robinson, which I am not offering in evidence.

[fol. 242] Your Honor, I have before me this page 43 which I said I was not offering in evidence, but I have presented Mr. Robinson with a photostat of the letter itself which he says is agreeable for me to put in. I therefore will ask the Court to consider this "Appendix 7", which is Appendix 43, and on the reverse side of the excerpt of the minutes of the Board, as part of the evidence, to be a part of that same exhibit.

The Court: That would be Defendants' Exhibit D-9.

Mr. Mays: That is right.

Mr. Hill: In other words, 43 and 44 are both going to be Exhibit 9?

Mr. Mays: That is right, being one document will be much simpler.

The Court: I will actually mark both sides of it, gentlemen.

Mr. Mays: Very well.

(The document referred to was marked Defendants' Exhibit D-9 for identification and received in evidence.)

Mr. Mays: I wish to offer in evidence, if Your Honor please, a photostat of a letter from Mr. Oliver W. Hill, to Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, N.A.A.C.P., and the caption is "Re Commonwealth v. Robert Edwards and Willie Savage," a letter dated April 6, 1950, and ask that that be marked in evidence as Defendants' Exhibit D-10.

The Court: It will be so marked.

(The document referred to was marked defendants' Exhibit D-10 for identification and received in evidence.)

Mr. Wickham: If Your Honor please, it will be recalled that Dr. Harold Johnson, of Arlington, Virginia, testified that he did not know the number of parcels of real estate that he owned in Arlington, nor the value of his real estate. It has been agreed with counsel for the plaintiff that the following may be read into the record and treated as a part of the record.

[fol. 243] The Court: Which witness, now, was this?

Mr. Wickham: Dr. Harold Johnson, of Arlington, Virginia.

The Court: All right.

Mr. Wickham: The land books of Arlington County show that fourteen parcels of real estate are in the name of the witness Harold Johnson, and the records in the real estate division of the offices of the Commissioner of Revenue in Arlington, Virginia, indicate that assessors in that office have placed appraised value on these fourteen parcels in the amount of \$87,650.

Mr. Hill: Well, the only thing I would like to state, Your Honor, is that we do not object to anything Mr. Wickham has stated in the record, but of course we do not waive any of our objections to the material quality of the evidence, nor do we agree to anything other than that which the public records in Arlington show.

The Court: The Court understands your position on that, Mr. Hill, it has been made for the record numerous times.

OLIVER W. HILL, was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Mays:

Q. Mr. Hill, you heard the testimony on yesterday of Mr. Banks about the payment of counsel fees?

A. Yes, sir.

Q. And I take it that the statement that he made as to the payments to you by the Conference of expenses and counsel fees were correct?

A. You mean that I have received the money that he said?

Q. Yes.

A. I am sure I did.

[fol. 244] Q. My present question is, did you receive compensation in any of the school cases from the N.A.A.C.P., itself?

A. From the national office?

Q. Yes.

A. No.

Q. Did you receive any compensation from the N.A.A.C.P. legal education fund?

A. From what period?

Q. From the middle of 1956 on down through 1958, the period of his account?

A. Not that I recall.

Q. Well, you would remember, would you not?

A. Put it this way. I am certain that I haven't received anything in the way of fees; it could have been in connection with some of these matters I received some money as expenses or some lawyers' services, or something of that sort.

Q. And would the same answer be true of individual branches of the N.A.A.C.P.?

A. Oh, I haven't received anything from any of the individual branches that was not reported to the Conference and reflected as Conference fees.

Q. And you would expect no compensation in the future as far as you know in these cases, except for the Conference itself?

A. Except as I stated to you on yesterday, that after the passage of these laws I did contact the plaintiffs in Charlottesville, and I so instructed fellow counsel in the other localities to reach a similar understanding with their respective plaintiffs with respect to the payment of fees and expenses, in the event that these laws should be held constitutional and we were prohibited from functioning as we functioned in the past.

Mr. Mays: That is all. Thank you.

(Witness excused.)

Mr. Mays: We recall Mr. Banks.

Whereupon, W. LESTER BANKS, was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

[fol. 245]

Direct examination—resumed.

By Mr. Mays:

Q. Mr. Banks, I have one question. There was put in evidence during your absence from the courtroom a photostat of what is designated as Directives to the branches adopted by the emergency south-wide N.A.A.C.P. Conference. If you are not quite familiar with that directive, I will ask you to take a look at it, please.

The Court: Exhibit number what?

Mr. Mays: Exhibit No. D-8.

By Mr. Mays:

Q. You are familiar with that?

A. I think I have seen it, yes.

Q. My question is whether or not the Virginia Conference has substantially followed the directive which you have just read. Has it been the policy of the Virginia Conference to follow that in its operations?

A. Generally speaking, yes.

Q. Do you know of any specific exceptions?

A. As I recall, that sample petition was not used in Virginia.

Q. Otherwise the directives that came out of Atlanta have been followed by the Conference of Virginia?

A. As a general policy.

Mr. Mays: That is all.

Mr. Hill: No questions.

The Court: Step down, Mr. Banks.

(Witness excused.)

Mr. Mays: The Defendants rest, Your Honor.

• • • • •

[fol. 247]

## DEFENDANTS' EXHIBIT D-1

[Handwritten notation—E. W. H. Jr.—11/10/58]

## "APPENDIX 10"

## VIRGINIA STATE CONFERENCE

*National Association for the Advancement of  
Colored People*

## ACTION LETTER

May 26, 1954

To: NAACP Branch Officers, Lay Members and Members of Legal Staff and Executive Board of Virginia State Conference—NAACP

Subject: State-Wide NAACP Emergency Meeting—  
June 6, 1954

In view of the recent unanimous decisions of the U. S. Supreme Court outlawing segregation in public education, we deem it imperative that a state-wide meeting of NAACP Leaders and Key Members be called to develop techniques to put into immediate effect the NAACP's Atlanta Declaration. (See attached copy.)

Accordingly, you are urgently invited to be present; to have all your officers and members of your executive committee present, and invite and urge key NAACP lay members of your branch to attend the NAACP meeting scheduled for:

Sunday, June 6, 1954, 10:30 A. M., EST.  
at the Benjamin Graves Junior High School  
119 West Leigh Street, Richmond, Virginia

Nothing is more important than to make certain that your branch is fully represented. We have taken into consideration the distance some of our members must travel and therefore have scheduled the meeting late enough to enable everyone to arrive in Richmond in time for the 10:30 A. M. opening. The school is within easy reach of the downtown eating places.



It is of utmost importance that your branch retain the leadership in all actions engaged in in your community. No conferences, petitions or other negotiations should be engaged in by NAACP or other responsible leaders with local school officials until after the June sixth meeting.

Thanking you for your immediate cooperation and compliance in the above matters, we are

Yours for a truly democratic Virginia,

/s/ W. LESTER BANKS  
W. Lester Banks  
Executive Secretary

/s/ J. M. TINSLEY  
J. M. Tinsley, DDS  
President

/s/ OLIVER W. HILL  
Oliver W. Hill  
Chairman—Legal Staff

App. 47

[fol. 248]

## "APPENDIX 11"

### VIRGINIA STATE CONFERENCE

National Association for the Advancement of  
Colored People

June 16, 1954.

Dear Branch Officer:

Re: Petitions to Local School Boards  
Representation at Dallas Con-  
vention

On Sunday, June 6, 1954, over 300 delegates from Virginia Branches of the National Association for the Advancement of Colored People met in Richmond to collectively plan and develop a program to implement the decision of the United States Supreme Court declaring public school segregation unconstitutional.

In order that the Virginia program might proceed with maximum uniformity and efficiency, it was decided at this meeting that all desegregation activities in Virginia would be handled by joint action of the Virginia State Conference and the Branch in the particular area. Further, that action would not commence in any area until the specific details have been worked out, and the joint program has been fully organized and all branches have been informed thereof. This joint program is designed to make the best use of our man power with a view to effectively servicing all local communities as rapidly as possible.

The Conference attorneys and the Association's legal department in New York collaborated in the preparation, for use in this connection, of a suitable petition and accompanying instructions. All copies of the petition and instructions were to have been sent to the Virginia State Conference. However, on June 11, they were inadvertently mailed directly to the Branches.

Use of this petition or procedures in accordance with such instructions prior to completion of organization of the Conference program, may promote confusion and diversity of activities in local communities. The Conference is proceeding with the development of its plan and will advise you thereof as soon as this work is completed.

The purpose of this letter is to request that your Branch temporarily refrain from any proceedings or activities respecting desegregation of the schools in your community until further communication from the Conference has been received.

Please let us hear from your branch by June 21 relative to the Dallas Convention.

Very sincerely yours,

/s/ W. LESTER BANKS  
W. Lester Banks  
Executive Secretary

[fol. 249]

## "APPENDIX 12"

June 30, 1955

*Confidential Directive:**Confidential Directive:*

To: Member Branches of the Virginia  
State Conference—NAACP

Re: Petitions.

In the Branch Directive adopted at the Atlanta, Georgia, June 4th, meeting, and unanimously approved—with exceptions as to techniques to be employed—at our Virginia State-wide, June 12th, Petersburg meeting, we declared:

"The decision (May 31, 1955) places a challenge on the 'good faith' compliance of the public officials, on the militancy of Negroes (and their sincere desire to obtain non-discriminatory public education). For our part, WE must be prepared to meet the challenge in a forthright manner. Our branches must seek to determine in each community whether the school board is prepared to make a prompt and reasonable start towards integration of the public schools and whether it (the school board) will proceed with 'good faith' towards full compliance with the May 31st decision at the earliest practicable date. Promises unaccompanied by concrete action are meaningless; neither can there be concern with the attitudes of individuals towards a change in the school system. Segregated schools are *illegal*, and the Court is merely allowing school boards time to get their houses in order. It does not allow time to *procrastinate, stall or evade*. It is the (immediate) *job of our branches* to see to it that each school board begins to deal with the problem of providing nondiscriminatory education".

The first step in ascertaining whether your local school authorities intend to comply with the law is the filing of a petition:

*The Petition*

The petition to be used by our Virginia communities is the one enclosed. Disregard the petition received from

the National Office. (This is with the consent of the National Office).

### *Method of Processing Petitions*

(1). For your convenience we are enclosing four petitions (2 to the Secretary, and 2 to the President). Upon receipt of the petitions, the Chairman of your Education Committee or another responsible branch official will fill in the appropriate spaces designating (a) County or city, (b) name of School Board, and (c) name of your Division Superintendent. DO NOT fill in the last two lines at the bottom of petition.

(2). Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of *parents* or *guardians* only. Each petition has an attached sheet for the signatures of 35 names and addresses. If a petition bearer needs additional space, provide one or more of the extra sheets being sent under separate cover.

(3). Petitions are to be signed by *parents* or *guardians* themselves, and if they cannot write someone can sign for them letting them make an (X) mark, but be sure to have a witness to this fact.

### App. 49

[fol. 250] (4). In event a petitioner's handwriting is not *readable*, the bearer of the petition should—in a tactful manner—secure the name and address of the petitioner and attach it to the petition (example: line 15 reads; Mrs. Lucy Wright, Route 1, Box 295, Oldtown, Virginia).

(5). Signatures should be secured from parents or guardians in all sections of the county or city. Special attention should be given to persons living in *mixed neighborhoods*, or near *formerly white schools*.

(6). The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way.

(7). Set an early deadline when petitions will be returned to your Education Committee's Chairman. The

quicker they are returned, the sooner your petition can be filed.

(8). The Education Committee's Chairman will *forward completed petitions to the Executive Secretary of the State Conference*. The Chairman of the Education Committee, or other responsible branch official will furnish the State Secretary, at the time of transmittal of petitions, the name and location of *meeting site*.

(9). Immediately upon receipt of petitions by the State Secretary, he will notify all the petitioners and branch officials that an emergency meeting will be held at the ~~meeting~~ site designated by the branch official.

(10). At that ~~meeting~~, everyone will be advised as to the next steps. It is absolutely necessary that all of the petitioners be present at this meeting.

*Note:* Following the above procedure, it becomes apparent that the faster your branch acts the sooner will your school board be petitioned to desegregate your schools. Every act of our branch and State Conference officials from this point on should be considered as *emergency action*, and must take precedence over routine affairs—personal or otherwise.

/s/ W. LESTER BANKS  
W. Lester Banks  
Executive Secretary

/s/ J. M. TINSLEY  
J. M. Tinsley  
President

WLB/oewp

— App. 50

[fol. 251]

## DEFENDANTS' EXHIBIT D-2

[Handwritten notation—E.W.H. Jr.—11/10/58—11/11/58]

Exhibit Hill B-17, Sept. 13, 1957

## VIRGINIA

since

May 17, 1954

## I. NAACP ACTIVITIES (May 17-December 31, 1954).

- A. Representative delegation of legal staff members, the president, and the executive secretary of the State Conference participated in the May 22-23 Atlanta Conference.
- B. State-wide meeting of branch officials and cooperating organizational heads held in Richmond on June 6, to interpret the decision, and plan implementation techniques.
- C. State Executive Board meets to formulate educational and fund-raising program to meet the already apparent organized opposition to the decision.
- D. 447 branch officials met in Richmond, and adopted a \$150,000 fifteen month budget.
- E. Petition filed in Prince William County.
- F. State NAACP organized opposition to State's effort to circumvent decision. Twenty-eight organizations and individuals (white, colored, or interracial in character) appeared before the public hearing held by the Governor's Commission on Public Education in Richmond on November 15th: all urging full and speedy compliance.
- G. Educational program conducted by our branches had been translated to Virginians to the extent that by the close of the year—the majority of the State, regional, and a number of the local religious bodies had taken a public stand favoring compliance. A vast majority of the Negro religious, educational, professional, and civic groups had



publicly praised the decision, and taken a firm stand for immediate compliance. The State NAACP membership showed a 25 per cent increase, and the Freedom Fund receipts were the highest in the history of the Association.

## II. ACTIONS OF GOVERNOR AND OTHER STATE EXECUTIVE OFFICERS

- A. Governor's first public statement admonished citizens to receive the decision with cool heads and sane minds, and for a time considered the appointment of a bi-racial commission (supposedly to implement the decision).
- B. The Attorney General becomes the Number One advocate in state official circles for defying the decision. Under his influence, county after county in Southside Virginia (the Black Belt) passed rote resolutions saying that "it will be in the best interest of both white and colored children for Virginia to continue her long traditional policy of racial segregation in public education". This county action was initiated in Halifax County on June 8th, and taken by other counties until a total of fifty-five (55) counties had so resolved.
- C. Governor and State Department of Ed. announce policy of continued racial segregation for 1954-55 school session.

On August 30, 1954 Governor Stanley appointed a 32 man legislative commission composed, for the most part, of representatives in the General Assembly from the "Black Belt".

[fol. 252]

- D. Governor and other responsible public officials continue to vacillate during the ensuing months.
- E. The Governor's Commission on Public Education holds state-wide unsegregated public hearing in Richmond on November 15, 1954.
- F. Opposition to compliance stemmed largely from the (1) Commission itself, (2) other members of the General Assembly from the several county

Boards of Supervisors—having passed anti-segregation resolutions, and from (3) a newly-organized anti-integrationist group known as the Defenders of State Sovereignty and Individual Liberties, Inc.—a private organization.

### III. ACTIVITIES OF PUBLIC OFFICIALS—JANUARY 1, 1955 TO DATE

- A. January, 1955—Governor's Commission on Public Education renders progress report to Governor declaring that, after careful consideration, "our conclusions indicate that the vast majority of Virginia citizens (both white and colored) favor the retention of racially segregated public education."
- B. The Attorney General and Counsel for Prince Edward County School Board argue before United States Supreme Court declaring that Virginia public schools cannot be integrated because "Negroes are too diseased, too dumb, and too sexually immoral" to attend classes with white children.
- C. May 31,—implementation of the decree handed down by the United States Supreme Court.  
May 31,—Prince Edward County Board of Supervisors vote to withhold all public school funds if schools are integrated.
- D. Joint statement by Governor and State Dept. of Education of continued racial segregation in public education for 1955-56 school session:  
Notteway, Surry, Sussex, Amelia, and James City Counties Boards of Supervisors follow Prince Edward County's cue, and vote to withhold public funds for operation of integrated schools.
- E. Commission on Public Education renders final report to Governor: Composite report known as "The Gray Report".

#### *Major recommendations:*

1. Some integration be permitted in some areas.
2. No student (white or colored) will be forced to attend an integrated school.

3. Special Session of General Assembly be called to:
  - (a). Authorize enabling legislation to hold Constitutional Convention
  - (b). Enact recommendations of Gray Report into Convention
4. Section 141 of State Constitution be deleted by Constitutional Convention action.
5. Adoption of pupil assignment plan.
6. Payment of tuition grants to those parents who are not willing to send their children to integrated schools, or where public schools have been abolished.

[fol. 253]

F. Governor issued call for Special Session of General Assembly.

1. General Assembly convenes on November 30.
2. Passes legislation authorizing January 9th Referendum.

G. Referendum passes 2-1 in favor of segregationists.

H. Regular Session of General Assembly convenes on January 10.

1. Passes Interposition resolution by vast majority.
2. Bill introduced to penalize Arlington County for announcing policy of gradual integration beginning September, 1956; by abolishing the method of electing School Board Officials by popular vote.
3. Bill introduced to withhold all state monies from school divisions that integrate.
4. Bill introduced to prohibit federal employees from holding state or municipal jobs—aimed at residents of Arlington County.
5. Resolution introduced to have General Assembly declare that the official policy of Vir-

ginia would be the operation of the public schools to continue on a racially segregated basis for 1956-57.

I. State Board of Education issues a joint statement with Governor in June, 1955, declaring that it will be the policy of Virginia to operate segregated schools during term 1955-56.

J. School boards or members of school boards in Arlington, Norfolk City, Shenandoah County, Williamsburg, and Richmond City, express willingness to comply with the Supreme Court Decision if and when permitted by State Board of Education.

#### IV. UP TO DATE PICTURE OF ACTION BY NAACP BRANCHES SINCE MAY 31.

A. Petitions filed and replies

A total of 55 branches have circulated petitions.

B. Where suits are contemplated

Petitions have been filed in seven (7) counties/cities.

Graduated negative response received in all cases.

C. Readiness of lawyers for legal action in certain areas

Selection of suit sites reserved for legal staff.

State legal staff ready for action in selected areas.

D. Do branches want legal action

The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the national and state Conference offices. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education.

[fol. 254]

## DEFENDANTS' EXHIBIT D-3

[Handwritten notation—E. W. H. Jr.—11/11/58]

STATEMENT OF LEGAL FEES AND EXPENSES PAID OUT IN  
1956, 1957 AND 1958

DATE	AMOUNT	PAID TO	DESCRIPTION
1956			
July 28	\$ 28.13	Victor J. Ashe <i>expense</i>	Norfolk School Case
" "	200.00	Oliver W. Hill <i>expense</i>	Advance expenses to Charlottesville & Arlington School Cases
1957			
June 5	267.66	Oliver W. Hill <i>expense</i>	Travel re Newport News School Case (Ashe, Madison, Thompson, Walker, Hill & Robinson)
June 6	495.75	Oliver W. Hill <i>expense</i>	Lawyers Publishing Co. and Holay (court reporter)
June 17	685.37	Victor J. Ashe \$170.00 <i>expense</i>	Norfolk School Case
June 17	494.00	J. Hugo Madison \$28.00 <i>expense</i>	Norfolk School Case)
Sept. 25	268.20	Lawyers Publishing Co. <i>expense</i>	Prince Edward School Case
Dec. 30	750.00	Philip S. Walker <i>fees</i>	Newport News School Case
Dec. 30	750.00	W. Hale Thompson <i>fees</i>	Newport News School Case
Dec. 30	212.62	W. Hale Thompson <i>expense</i>	Expenses re Newport News Sch. Case
Dec. 30	1100.00	Oliver W. Hill <i>fee</i>	Paid on Account Newport News & Norfolk Sch. Cases

DATE	AMOUNT	PAID TO	DESCRIPTION
1958			
May 12	\$750.00	Philip S. Walker <i>fees</i>	Newport News School Case
May 12	750.00	W. Hale Thompson <i>fees</i>	Newport News School Case
May 12	685.38	Victor J. Ashe <i>fees</i>	Norfolk School Case
May 12	494.00	J. Hugo Madison <i>fees</i>	Norfolk School Case
May 15)	47.50	Mrs. Evalyn Shaed <i>expense</i>	Clerical services re Sch.
)	2000.00		Cases
June 30)	<del>1000.00</del>	Oliver W. Hill	Paid on acct. for School Cases Per Statement (5/9/58)
July 31	500.00	Oliver W. Hill <i>fees</i>	School Cases; Paid on Ac- count
Sept. 10	700.00	Oliver W. Hill <i>fees</i>	School Cases; Paid on Ac- count
Sept. 10	500.00	Victor J. Ashe <i>fees</i>	Norfolk Sch. Case, on ac- count
Sept. 10	500.00	J. Hugo Madison <i>fees</i>	Norfolk Sch. Case, on ac- count
Sept. 26	200.00	Oliver W. Hill <i>fees</i>	School Cases; Paid on Ac- count
	<u>\$11,378.61</u>		
	1,000.00		
	<u>\$12,378.61</u>		

Italicized material handwritten.



[fol. 255]

DEFENDANTS' EXHIBIT D-4

[Handwritten notation: E. W. H. Jr. - 11 41 58]

Exhibit Hill B-14, Sept. 13, 1957

July 1, 1953

Mr. Jesse B. Smith,  
22 Court Street  
Hampton, Virginia

Dear Mr. Smith:

Your letter of June 19, requesting legal assistance, has been received. I regret that my absence from the office prevented an earlier reply.

I am sincerely sorry that you find yourself burdened with your present troubles, however, may I advise that the National Association for the Advancement of Colored People is limited by its charter in the amount and kind of aid it can render in criminal cases. Contrary to popular opinion, our Association is not a legal aid society.

The assistance the Association can render is of two kinds: the first kind of case is one in which an innocent Negro has been charged with a crime solely because of race or color; the second kind of case is one in which an innocent Negro charged with a crime has been convicted as the result of the denial of some constitutional right, such as the right not to be tried by a jury which all Negroes have been systematically excluded, or convicted through the use of a confession which has been extorted through the use of force, or where the accused has been denied the effective use of counsel.

Not having details of your particular case I cannot properly classify it, however, from the content of the first page of your letter, it is apparent that your particular case will not fit any of the above mentioned limitations.

We would advise that you immediately contact your brother and see whether or not some arrangement might be effected whereby private counsel can be retained to

represent you. If you fail to secure the services of private counsel, the State of Virginia is obligated to appoint an attorney to defend you during the trial. Trusting that your case will be handled in a fair and impartial manner, I remain,

Very truly yours,

Executive Secretary

[fol. 256]

DEFENDANTS' EXHIBIT D-5

[Handwritten notation—E. W. H. Jr.—11 12 58]

- *This letter corrects some misconceptions which might have been given by Mr. Caplan's article in the January Crisis*

THE VIRGINIA SCHOOL FIGHT  
—A CLARIFICATION

It was with deep interest that I read the article entitled "Virginia Schools: A Study in Frustration," by Marvin Caplan, appearing in the January 1951, issue of *The Crisis*. While I consider this an illuminating, thorough and well-written article, I also feel that the observations hereinafter set forth are essential to a full understanding of the policies, both past or present, followed in the educational opportunities program in Virginia.

The significant fact, of which only a very few *Crisis* readers would be aware, is that this article was written about a year ago, and at a time when techniques and procedures in educational cases at the elementary and secondary school levels differed somewhat from those pursued at present. During the period covered by the article, the Virginia program was conducted with a view to the elimination of racial segregation, as well as of racial discrimination, from the public schools of Virginia. All cases at this level were carried through by proceedings in which the existing inequalities resulting in direct discrimination against Negro process were set forth and injunctive process

sought requiring school officials to cease discriminating against them. These cases were intended as the foundation upon which further efforts toward integration would be based. We did not seek or ask for segregation, nor did we assume or recognize the validity of separate school law. Instead, we kept clear our position that we did not recognize such laws as valid, and would continue to challenge them in legal proceedings. For the same reasons, we refrained from engaging in proceedings, in court or otherwise, which condoned segregation in public schools, or which admitted or assumed the validity of segregation laws.

However, at the conference of Association attorneys, held in New York City on June 26-27, 1950, it was decided that thereafter in all cases, at any level, the prayers in the pleadings, and the proof, and all other matters and efforts, would be directed at obtaining education on a non-segregated basis, and that no relief other than of this character would be sought or accepted, and that all attorneys operating under this rule would urge their clients and the Association branches and other organizations involved to insist upon this final relief. On October 22, 1950, the Virginia State Conference of the Association, in convention, adopted substantially the same policy for all educational cases and matters in Virginia.

Past policy did not differ from present policy as much as superficial comparison might indicate. The Association's policy has always been the elimination of segregation from public education, and the Virginia cases were all directed toward that goal through employment of a two-stage technique: (1) an effort to obtain an injunction against continued racial discrimination, without either admitting the validity of separate school laws, or directly attacking them at this stage; and (2) a direct attack upon separate school laws by proceedings, based upon the injunction and concomitant declarations, to compel the admission of Negro students to the existing facilities previously afforded to white students only. Present policy is thus seen to differ from past policy only in that the two-stage technique formerly pursued in elementary and

secondary schools cases is now eliminated, and a one-stage effort, involving a direct and immediate attack upon segregation laws, is made in all cases.

Richmond, Virginia  
January 29, 1951

Spottswood W. Robinson, III  
Regional Special Counsel, NAACP  
Southeast Region

### DID YOU KNOW—

That Petronius describes Ethiopians as having thick lips and frizzly hair?

Ethiopians or Negroes are mentioned in chapters 34 and 102 of Petronius' *Satirica*.

• • •

That Guy de Maupassant wrote a short story with a Negro theme?

The story is "Boitelle," which the critics describe as "particularly excellent," found in the volume *The Left Hand*. Antoine Boitelle is a Norman farm boy whose mother forbids him to marry the Negro girl he loves.

• • •

That the late Georges Clemenceau had a vast indignation against America because of the way whites treat Negroes?

Jean Martet, for many years Clemenceau's secretary, sets down some of "The Tiger's" acid comments in *The Silences of Clemenceau* and *Clemenceau Portrays Himself*. He once told Martet that the United States was too young to know that a man is a man, and that it would probably take her a thousand years to learn.

(Reprint from "The Crisis"—April, 1951 issue  
—pp. 228-229.)

[fol. 258]

## DEFENDANTS' EXHIBIT D-6

[Handwritten notation: E. W. H. Jr. 41 12 58]

- *What goes on behind the educational color-bar in Virginia*

## VIRGINIA SCHOOLS: A STUDY IN FRUSTRATION

*By Marvin Caplan*

Depend on the South to hold to an old tradition. For more than half a century "separate but equal" has been its ringing answer to any question of how white and Negro people ought to live together. But separating whites and Negroes has only deepened the hatreds on both sides. And the tragic history of southern race-relations is full of the bitter antithesis of Negroes struggling for equality and whites struggling to keep it from them.

If, for many southerners, this is no argument against the maintenance of the policy, the cost (the simple dollars and cents of building duplicate schools and hospitals and bus-station waiting rooms) might be calculated to wear down southern resolution.

Southern stalwarts falter but regroup themselves. Southern white lawyers, educators, and politicians now talk in terms of "separate but substantially equal" facilities for white and Negro citizens. Beyond that they do not mean to budge.

Today one of the clearest battlefields upon which the fate of the doctrine is being decided is the southern public school. For southern Negroes have grown tired of having the worst schools in an area notorious for its bad schools. They are demanding for their children an education at least the equal of that given white children.

In Virginia, North and South Carolina, Texas, Georgia, and Arkansas, Negro parents have begun to sue for decent schools. And all of these suits make it plain that while white school boards and superintendents have been

---

MARVIN CAPLAN is a member of the civil-rights committee of the Richmond, Va., branch NAACP.

careful to keep the schools separate, they have been so little concerned about equality that Negro schools customarily lag twenty to twenty-five years behind the white ones.

Suddenly, "separate but equal" has become a trap. Alarmed white southerners find that both the laws of this [fol. 259] country and the laws of their own states agree with the plaintiffs: for the "equal" part of the doctrine is quite as important as the "separate." An even more terrifying legal possibility exists. The courts could rule, with Chief Justice Hughes' decision in the Gaines case as precedent, that "equal" comes first and that laws separating the races are only admissible where both groups start off with equal privileges. As a result, one of the great stirrings in the South these days is the rush of southern school officials to bring their Negro schools up to par with the white schools of the community before their theories can be tested in the federal courts.

### *Suits Astonished*

It all seems to have happened so quickly that white communities still greet these suits with astonishment. "They were shocked when we brought our suit," said a Negro attorney in Durham, N. C. "They thought we were such good friends." To the white southerner, who has always told the rest of the country that "we know how to get along with our Negroes," it is bewildering to discover that so many of his colored friends have been harboring bitter grievances.

Still the old tradition is cherished. If you examine the school suits in Virginia, where such suits were first undertaken and where they have had the most notable successes, you begin to appreciate the dogged, self-consuming attachment too many white southerners have to their split, two-colored world.

Most white Virginians find it hard to believe that Negroes in their community would undertake a court action, unless somebody coaxed them into it.

"It's that NAACP," a county school secretary said, with a rural southerner's scandalized horror of "outside in-



fluences." "They come down here into the county and stir the Negroes up. Tell them: 'See what the white folks have in their schools? You ought to have that in your school, too.'"

Actually the NAACP stirs up Negro communities the way a handy baseball bat incites an angry man. Southern Negroes have long been conscious of the cast-off nature of their schools. What the NAACP has done, through its local chapters and through its legal staff, has been to provide its members with a weapon that they can use to fight for their children's rights.

### *White School Officials*

If anything arouses a Negro parent it is his daily experiences with white school officials. If he lives in Lynchburg, Va., for instance, he knows that until the NAACP announced its equalization suit, the school board was planning a new \$4 million white high school, whose landscaping alone, at \$300,000, would cost more than the combined value of all the colored schools in the city. If he lives in Pulaski county, he realizes that though he may live in the very shadow of a white high school, his child cannot attend it but must, instead, travel 60 miles a day going to and from an inferior Negro school in the neighboring county. Or if he lives in a county that provides Negro secondary education in a "Training School," the [fol. 260] chances are that his child will be unable to prepare for either an academic or a commercial career. By the decision of white school officials, an NAACP attorney says, training schools have two simple purposes: "To train the boys in agriculture, so they can work on the white man's farm; and to teach the girls home economics, so they can drudge in the white folks' kitchens."

### *Plaintiffs Available*

When Negro parents find that delegations and letters to their school authorities bring them no redress, they are ready for something more drastic. At a mass meeting of their NAACP branch or PTA (the Virginia NAACP does not require that one of its branches start proceedings) they

vote to have someone come down to see if they have the basis for a suit. By the time the NAACP investigators and members of the NAACP legal staff arrive, the community has thoroughly bestirred itself.

There is never a lack of children and parents to act as plaintiffs.

The first survey of the white and Negro schools in an area is conducted by W. Lester Banks, executive secretary of the state conference of the NAACP, and some member of the Richmond law firm of Hill, Martin and Robinson. The three lawyers have handled or have associated themselves with all the school suits brought in Virginia. They have assisted in suits in Georgia and the Carolinas and have had more experience with school-equalization cases than any other lawyers in the South.

Once this first examination shows in what respects the Negro schools are inferior, formal petition is made to the local school board, asking it to stop discriminating. While the school board studies the petition, and either refuses to act or insists it cannot, the survey of the schools goes on in increasing detail.

Although all the schools in a division may figure in the suit, the case usually centers around the high schools. The differences there are generally more numerous and dramatic. Educational experts from nearby Negro colleges are called in to help compare the schools. For the suits are largely based upon such comparisons.

When it becomes clear that a board will not act, the suit is filed. Briefs lean heavily upon the equal protection of the laws guaranteed to all people by the 14th Amendment and by federal statute; the briefs also include mention of similar guarantees contained in the laws of Virginia.

### *Segregation Invalid*

Hill, Martin and Robinson go a step beyond insisting upon equal facilities. They say that "racial segregation in the schools is invalid where opportunities and facilities afforded Negroes are unequal."

"But so far," Robinson explains, "no contention has been made in a Virginia case that segregation is invalid

even where equality is afforded. That will come later." For while segregation is nowhere defended in these cases and the validity of separate schools is not admitted, segregation is not attacked head-on. To argue that "seg-[fol. 261]regation in itself is discrimination" would bring the constitutionality of Virginia's laws into question and shake a southern community to the very roots of its prejudices.

Of course, NAACP leaders point out, the day may come when the suits will make operation of segregated schools so costly and complicated that southern communities will not be able to afford them. Robinson can foresee a day when segregation itself will be independently attacked. But meanwhile it is simpler, and the relief of the situation comes more quickly, when the lawyers insist upon the immediate satisfaction of rights already guaranteed by law and prepare the foundation for an all-out attack upon segregation in the near future.

### *Proof Difficult*

But even arguing within existing laws, it is not always easy to prove inequality. It might seem a simple matter to a person driving around Virginia to say when a Negro school is inferior to a white one. Usually a glance is sufficient. Once you enter court, though, and begin to debate what constitutes "equal facilities" the testimony of the senses may not be enough.

A good example of this is the Arlington county school case. (See "Arlington Arguments," July 1950, *Crisis*).

In Arlington county, across the Potomac from Washington, about 300 Negro students attend the Hoffman-Boston school, an educational catch-all with a range of grades from 1 to 12.

In a recent publication, the Virginia State Board of Education has estimated that it takes a school with a student body of at least 600 to make the offering of a varied program feasible. From this observation alone it would appear that the 48 senior-high students at the Hoffman-Boston school could not hope to get as good an education as the one afforded the 1,837 white students who attend the nearby Washington & Lee high school.

When the suit began, Hoffman-Boston seemed unequal from every point of view. Everything and everyone inside the school seemed to be doing double-duty. The fact that Hoffman-Boston high-school students could not get at least thirty-seven courses offered at Washington & Lee; and the fact that their school was unaccredited by either state or regional accreditation bodies also seemed to be serious discrimination against the students.

Yet Attorney Lawrence Douglas, defending the Arlington county schools against the complaints of Negro parents and pupils, argued that contrary to what the plaintiffs charged, a comparison of the schools showed many advantages on Hoffman-Boston's side. Every specific act of discrimination was met with the sophistical argument that it was in reality an advantage. Of the many adduced only one need be mentioned.

### *Simple Calisthenics*

If the children of Hoffman-Boston could do little more than simple calisthenics in their gymnasium-auditorium, at least all the students had a chance to exercise. If they [fol. 262] had no real outside playground, they did have a fine view of the Army-Navy golf course.

In conclusion, the defense said that if Hoffman-Boston did suffer any inferiorities they were due to its smallness and not to the color of its students. Dr. Howard A. Dawson, director of rural education for the National Educational Association, and a witness for the defense, concurred in this when he took the stand. He said that while Hoffman-Boston was a small school because of the Virginia segregation laws, size, and size alone, determined its curriculum. It was economically impractical to teach certain courses in so small a school. "That is not discrimination," he sagely remarked, "It is an incident of classification."

### *Decision Exceptional*

Douglas won the case. Judge Albert V. Bryan, of the U. S. district court, ruled that there was no discrimination

because of color and that the schools were substantially equal in their offerings.

The case is now being appealed to the U. S. Court of Appeals.

Comforting as this decision may have been to worried white educators, it is an exceptional one. Except for Arlington, the NAACP has won every equalization suit it has brought in court, although the number of completed cases is small.

But where suits were won colored schools have been so markedly improved that the NAACP state office has had more investigation requests than it can handle. Ten cases are at present in petition and more than 100 are in various stages of investigation. Brief as the history of these cases may be, it contains two notable court decisions and many stories of school officials driven by panic into subterfuge.

Of the two court decisions, the one that has received the most widespread attention is the final one in the Gloucester case. In this case, District Court Judge Sterling Hutcheson, who has presided in three of the suits and has ruled against the school officials each time, ruled that Gloucester county was discriminating against its Negro children. He handed down his decision in April, 1948. As it became increasingly clear to NAACP attorneys that the county was making almost no attempt to improve conditions in the Gloucester County Training School, the board members were brought back into court. On January 13, 1949, Judge Hutcheson found the division superintendent and three board members in contempt of court, and on May 4 he fined each of them \$250.

The Danville *Bee* for January 17, 1949, observed editorially:

The decision is of immense importance. It is the sort of thing, which if carried out to its logical conclusion, might find nearly all the Virginia jails choked with its school boards and superintendents, because it is well understood that nowhere in Virginia are colored school facilities quite up to the standards of the white schools, nor could the situation be swiftly remedied.

Although Robinson believes that this was the first time a federal court ruled against school officials so decisively in a case of this sort, he feels that the decision in the Pulaski county case may be more far-reaching in its effects upon Virginia's schools.

Pulaski county has no Negro high . . .

(Reprint from "*The Crisis*"—January, 1951 issue—pp. 5-9.)

(Reprint from "*The Crisis*"—August-September, 1951 issue—pp. 475-476.)

[fol. 263]

#### DEFENDANTS' EXHIBIT D-7

[Handwritten notation—E. W. H. Jr.—11 12/58]

### RESOLUTIONS ADOPTED BY THE FORTY-SECOND ANNUAL CONVENTION OF THE NAACP AT ATLANTA, GA., JUNE 30, 1951

#### *Preamble*

As we meet in Atlanta in this mid-century year of 1951 for the Forty-second Annual Convention of the National Association for the Advancement of Colored People, we may from this vantage point in time and place both measure the progress we have made and assay the tasks which lie ahead. When we met in this capital city of the South in 1920 in our eleventh annual convention, we were preoccupied with the development of defensive measures against mob violence. Today, with the abatement of lynching and mob terror, we are primarily concerned with the abolition of enforced segregation in all public life.

Segregation is now, as it was then, the evil root from which stem all the sinister manifestations of bigotry, of intolerance, of racism, of cynical defeatism. Not until this evil is eradicated from American life will we attain a society of freedom, justice, equality and security for every American.

In 1920 we were on the defensive against the most deadly and foul manifestations of the jim-crow system. Today we are on the offensive in a persistent and unrelenting campaign to level the ramparts which have isolated the nation's 15,000,000 Negroes from the main stream of



American life. In the intervening years, we have surmounted one barrier after another securing, in the course of our struggle, the right to the ballot, the right to equality in education, the right to freedom of residence, the right to a fair trial, the right to unsegregated service in the Navy and Air Force, and to some extent in the Army.

But the evil root of segregation remains in many parts of the country reaching deep down into the subsoil of American culture. The task of uprooting this corrosive evil is the responsibility not alone of the Negro but also of the entire nation. Here in Atlanta in the middle of the Twentieth Century we re-dedicate ourselves to this task from which we shall not be turned back. Victory is within our grasp but our triumph will not come easily or automatically. With redoubled energy we shall renew and intensify the attack through legal action, through sponsorship of legislative measures, and through appeal to enlightened public opinion. In support of this re-dedication and in order to provide for its implementation, we hereby adopt the following resolutions:

#### *Anti-Communism*

WHEREAS, the 41st Annual Conference in Boston adopted a resolution calling attention to internal conflicts in some branches caused by groups which follow the Communist line, and condemning attacks on the Association and its leaders by Communists and their fellow travelers; and instructed the Board to take steps to stop Communist [fol. 264] infiltration or control of our branches, and

WHEREAS, the cardinal principle of those who follow the Communist line is to support whatever happens to be at the moment the foreign policy of Russia, a totalitarian dictatorship, while the cardinal principle of the NAACP is to support and strengthen American democracy by winning complete equal rights for all people regardless of race, and

WHEREAS, the Board of Directors, in an attempt to carry out this purpose adopted an amendment to our constitution restricting membership to those who support the principles and program of the NAACP, and

WHEREAS, these principles include opposition to Communist infiltration and control,

BE IT RESOLVED, that we call the attention of the branches to this action of the Board in carrying out the anti-Communist resolution; and

BE IT FURTHER RESOLVED, that we advise the branches that any person excluded from the branch for not being in accord with our policies and principles has a right of appeal to the Board, and that mere criticism of the local or national officials of the NAACP is not alone and of itself ground for exclusion or rejection.

### *"Separate But Equal" Theory*

WHEREAS, our constitution limits membership in this association to persons who are "in accord with the principles and policies of the association," and

WHEREAS, the policy of the association, as established and re-established in our conventions, not only is opposed to racial segregation, but requires all branch officers, members and attorneys to refrain from participation in any cases or other activities which in any manner seek to secure "equality" within the framework of racial segregation, and

WHEREAS, experience has demonstrated the wisdom of this policy and the need for complete uniformity in our work,

BE IT RESOLVED, that we reaffirm this policy of fighting for complete integration in education, public housing and other public facilities, and

BE IT FURTHER RESOLVED, that we give to the Board adequate disciplinary powers to enforce this policy by whatever disciplinary actions may be necessary against any NAACP officer or employee who may take action inconsistent with this policy.

### *U. S. Steel Corporation*

Because the dominant economic position of the Tennessee Coal and Iron Corporation in Jefferson County bears a grave social responsibility in regard to the maintenance of

decent standards of law enforcement in Birmingham, Alabama, this Convention calls upon the parent organization, the United States Steel Corporation, to exert its powerful influence through its subsidiary, the Tennessee Coal and Iron Corporation, to stop recurrent police killings of innocent Negro citizens in Birmingham.

### *Price Roll-Back*

The National Association for the Advancement of Colored People assembled in Atlanta, Georgia, by formal and unanimous vote on June 28 of 800 delegates from 40 states and the District of Columbia calls upon the Congress of United States to pass such laws as will curb inflation and bring about equality of sacrifice by all citizens in this emergency; that will make it an offense punishable by fine and imprisonment to profiteer at the expense of our country, our soldiers and citizens. We call \* \* \*

[fol. 265].

### DEFENDANTS' EXHIBIT D-8

[Handwritten notation—E. W. H. Jr.—11/12/58]

### DIRECTIVES TO THE BRANCHES ADOPTED BY EMERGENCY SOUTHWIDE NAACP CONFERENCE

On May 17, 1954, the United States Supreme Court in a historic decision outlawed racial segregation in public schools. On May 31, 1955, in another unanimous decision, the Court ordered "good faith compliance" with this decision "at the earliest practicable date" and made the lower federal courts guardians in the enforcement of this order and arbiters as to whether good faith is being practiced by school authorities.

A sampling of sentiment throughout the country indicates a generally favorable reaction to the May 31 decision, with Kentucky, Oklahoma, Maryland, Missouri, Delaware and West Virginia promising full compliance. There will be resistance in the rest of the South in varying degrees, but make no mistake about it, this decision in no way cuts back on the May 17 pronouncement. Indeed, the

May 31 decision merely affords to law-abiding public officials an easy method to conform to the Constitution of the United States. The decision places a challenge on the good faith of the public officials, on the militancy of Negroes and on the integrity of the federal courts.

For our part, we must be prepared to meet the challenge in a forthright manner. Our branches must seek to determine in each community whether the school board is prepared to make a prompt and reasonable start towards integration of the public schools and whether it will proceed with good faith towards full compliance with the May 31 decision at the earliest practicable date. Promises unaccompanied by concrete action are meaningless; nor can there be concern with the attitudes of individuals towards a change in the school system. Segregated schools are illegal, and the Court is merely allowing school boards time to get their houses in order. It does not allow time to procrastinate, stall or evade. It is the job of our branches to see to it that each school board begins to deal with the problem of providing non-discriminatory education. To that end we suggest that each of our branches take the following steps:

1. File at once a petition with each school board, calling [fol. 266] attention to the May 31 decision, requesting that the school board act in accordance with that decision and offering the services of the branch to help the board in solving this problem.

2. Follow up the petition with periodic inquiries of the board seeking to determine what steps it is making to comply with the Supreme Court decision.

3. All during June, July, August and September, and thereafter, through meetings, forums, debates, conferences, etc., use every opportunity to explain what the May 31 decision means, and be sure to emphasize that the ultimate determination as to the length of time it will take for desegregation to become a fact in the community is not in the hands of the politicians or the school board officials but in the hands of the federal courts.

4. Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.

5. Seek the support of individuals and community groups, particularly in the white community, through churches, labor organizations, civic organizations and personal contact.

6. When announcement is made of the plans adopted by your school board, get the exact text of the school board's pronouncements and notify the State Conference and the National Office at once so that you will have the benefit of their views as to whether the plan is one which will provide for effective desegregation. It is very important that branches not proceed at this stage without consultation with State offices and the National office.

7. If no steps are announced or no steps towards desegregation taken by the time school begins this fall, 1955, the time for a law suit has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.

8. At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court.

### *Sample Petition*

We, the undersigned, are the parents of children of school age entitled to attend and attending the public elementary and secondary high schools under your jurisdiction. As you undoubtedly know, the United States Supreme Court on May 17, 1954, ruled that the maintenance of racially segregated public schools is a violation of the Constitution of the United States and on May 31, 1955, reaffirmed that principle and requires "good faith compliance at the earliest practicable date," with the federal courts authorized to determine whether local officials are proceeding in good faith.

We, therefore, call upon you to take immediate steps to reorganize the public schools under your jurisdiction on a non-discriminatory basis. As we understand it, you have the responsibility to reorganize the school systems under [fol. 267] your control so that the children of public school age attending and entitled to attend public schools cannot be denied admission to any school or be required to attend any school solely because of race and color.

The May 31 decision of the Supreme Court, to us, means that the time for delay, evasion or procrastination is past. Whatever the difficulties in according our children their constitutional rights, it is clear that the school board must meet and seek a solution to that question in accordance with the law of the land. As we interpret the decision you are duty bound to take immediate concrete steps leading to early elimination of segregation in the public schools. Please rest assured of our willingness to serve in any way we can to aid you in dealing with this question.

(Reprint from "*The Crisis*"—June-July, 1955 issue  
—pp. 339-340 and 381.)

[fol. 268]

#### DEFENDANTS' EXHIBIT D-9

[Handwritten notation—E. W. H. Jr.—11/12/58]

#### "APPENDIX 7"

20 May 1952

Rev. H. W. McNair  
Box 116  
Amelia, Virginia

Dear Rev. McNair:

This is with reference to the matter, recently discussed with me, of participation by this office drafting a reply to a letter received by your group by the County School Board of Amelia County.

Upon our conference you advised that the effort of your group is to obtain consolidation of Negro elementary



schools in said county, and that the effort is limited to this objective.

As you were then advised, it is not possible either for this office or the NAACP to lend assistance in connection with this effort. In June, 1950, the Association adopted a policy requiring that all education cases seek facilities and opportunities on a racially nonsegregated basis. This policy is binding upon all Association attorneys, and it is apparent that the plans of your group do not conform to this policy.

At your request, Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, NAACP, was contacted, and he is arranging to visit your group at an early date to more fully explain the Association's policy and its recommendation as to educational matters in your county.

Very truly yours,

/s/ SPOTTSWOOD W. ROBINSON, III

of Hill, Martin & Robinson.

SWR:dms

cc: Mr. W. Lester Banks  
Executive Secretary  
Virginia State Conference, NAACP  
404½ North Second Street  
Richmond 19, Virginia

App. 43

[fol. 269]

## DEFENDANTS' EXHIBIT D-9

[Handwritten notation—E. W. H. Jr.—11/12/58]

## "APPENDIX 8"

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE*Meeting of the Board of Directors*

October 9, 1950

The regular meeting of the Board of Directors was held at the offices of the Association, 20 West 40th Street, New York City, at 3:30 P. M., pursuant to notice:

*Report of the Special Counsel:*

The Special Counsel reported that during the Annual Convention in Boston, a meeting was held of state conference presidents to discuss the question of future action on the Sweatt and McLaurin cases. Immediately following the Annual Convention, a conference of NAACP lawyers was held in New York on June 26-27 and during that conference machinery for handling of legal cases was discussed. The conference adopted the following resolution which the Special Counsel presented to the Board for its consideration:

"Pleadings in all educational cases—the prayer in the pleading and proof be aimed at obtaining education on a non-segregated basis and that no relief other than that will be acceptable as such.

"Further, that all lawyers operating under such rule will urge their client and the branches of the Association involved to insist on this final relief."

The Special Counsel stated that it would be made clear that we are out to break up segregation. For the most part, branches would go along with this resolution, although he said that in Durham, N. C., money has been taken up to make better jim crow schools.

Mr. Weber inquired if this meant that the branches would be prohibited from starting equal facility cases and

the Special Counsel said it did. He then asked if we were binding our local branches not to start such cases, and in the event they did what would be our next action. The Special Counsel said that the resolution above related to the lawyers. But he wished to recommend that the Board make it the policy of the Association that no branch participate in cases other than those attacking segregation head on.

Mr. Lewis made a motion, which was seconded, that the above resolution passed at the lawyers conference be adopted by the Board.

Mr. Dickerson made an amendment, which was seconded, that we state this as the policy of the Association which is to guide the conduct of all local branches.

The motion was passed as amended.

App. 44

[~~fol. 270~~]

DEFENDANTS' EXHIBIT D-10

[Handwritten notation—E. W. H. Jr.—11/12/58]

(Letterhead of Virginia State Conference, National Association for the Advancement of Colored People, 404½ North Second Street, Richmond, Virginia.)

6 April 1950

Mr. W. Lester Banks  
Executive Secretary  
Virginia State Conference, NAACP  
404½ North Second Street  
Richmond, Virginia

Re: Commonwealth v. Robert Edwards  
and Willie Savage

Dear Mr. Banks:

I had Victor Ashe to investigate the above styled cases in order to determine the feasibility of NAACP participation.

The case is being handled by an attorney for the Progressive Party and their only request is for financial aid. The granting of financial aid to cases not handled by the NAACP is contrary to the policy established by the Executive Board. Thus, in order to participate in this case it would be necessary to call a Board meeting.

In view of all the information furnished me I do not recommend that this case be accepted; therefore, I see no reason for convening the Board.

It is highly advisable that the constitutionality of Section 40-64 of the Code of Virginia be attacked in order to protect the rights of working people, but I think that a great deal of care should be exercised to raise the question in a case possessing more favorable facts than the case under consideration.

I think you should advise Mr. Kalb of our position at the earliest opportunity. I think his telephone is 7-8900. I do not know his address.

Very truly yours,

/s/ OLIVER W. HILL  
Oliver W. Hill

[fol. 271]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION  
Civil Action No. 2435

---

NATIONAL ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE

v.

J. LINDSAY ALMOND, JR., Attorney General, et al.

and

Civil Action No. 2436

N.A.A.C.P. LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC.

v.

J. LINDSAY ALMOND, JR., Attorney General, et al.

[fol. 272]

---

**Transcript of Trial Proceedings—September 16, 1957**

Richmond, Virginia

Before Honorable Morris A. Soper, Circuit Judge, Honorable Sterling Hutcheson, and Honorable Walter E. Hoffman, District Judges.

**APPEARANCES:**

For the Plaintiffs: Messrs. Thurgood Marshall, Oliver W. Hill, Spottswood W. Robinson, III and Robert L. Carter,

For the Defendants: Messrs. David J. Mays, Henry T. Wickham, John W. Edmonds, Clarence F. Hicks, Assistant Attorney General, and J. Segar Gravatt.

. . . . .

[fol. 273] W. LESTER BANKS, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Will you give your name, sir?

A. W. Lester Banks.

Q. Where do you live, Mr. Banks?

A. I reside at 1613 Monteiro Avenue, Richmond, Virginia.

Q. What employment are you following at the present time?

A. I am employed as Executive Secretary of the Virginia State Conference of Branches of the National Association for the Advancement of Colored People.

Q. How long have you been so employed?

A. I have been so employed since March 4, 1947. I began my active duties April 1, 1947.

Q. Is that a full-time or a part-time job?

A. It is a full-time job.

[fol. 274]. Q. Is it salaried or unsalaried?

A. It is a salaried job.

Q. What is the Virginia State Conference of Branches of the Association?

A. The Virginia State Conference of Branches is an unincorporated association of branches of the NAACP operating in the State of Virginia.

Q. As the Executive Secretary, what are your duties and responsibilities?

A. As Executive Secretary of the Conference, among my duties I have these: First of all, I coordinate the activities of the member branches of the Association operating in the State of Virginia; I supervise the membership and fund-raising campaigns; I investigate complaints; I appear before state bodies—legislative bodies and commissions—and in addition to that we conduct an intensive educational campaign to educate the people of Virginia generally as to the harmful effects of racial discrimination.



and segregation. In addition to that, we conduct an intensive registration-poll tax-voting campaigns among the Negroes of the State of Virginia. Those are principally my responsibilities.

By Judge Soper:

Q. How many branches are there?

A. There are 89 active branches, sir.

Q. What is the relationship of the organization which you are connected with in the Conference with the plaintiff corporation?

A. The Virginia State Conference is a subsidiary of the NAACP, subordinate unit.

Q. What is the organizational structure, Mr. Banks, of the Conference?

A. The organizational structure of the Virginia State Conference, the Conference is composed of the member branches operating in the State of Virginia. These branches meet in annual conventions. Its annual convention, the branches or the delegates of the branches elect officers and the members of our board of directors. At the present time we have serving as officers a president, a vice president, [fol. 275] a treasurer and eleven members of the board of directors.

Q. Do you have any relationship to the New York corporation? If so, what is it as executive secretary?

A. As executive secretary of the Conference, I am employed by the member branches. The relationship between myself and the New York corporation is that in the performance of my duties I carry out the policies and the program of the Virginia State Conference as those policies and the programs are laid down in the annual conventions and by the board of directors.

By Judge Soper:

Q. What annual convention?

A. That is my State annual convention.

By Mr. Carter:

Q. What is the policy and the program of the Virginia State Conference?

A. The policy and the program of the Virginia State Conference is to educate Negroes as to what their rights are, to educate the public generally as to the harmful effects of segregation and discrimination, to conduct, annually, membership and fund raising campaigns, to conduct intensive pay-your-poll-tax-registration and vote drives, to encourage individuals to assert their constitutional right; another very important function of the Conference is to assist in cases involved (sic) discrimination.

Q. Would you just briefly be specific about some of the activities? For example, this year what have you done in this area, so that the Court will understand?

A. During 1957, the Conference has conducted an intensive registration or suffrage campaign, so much so until we have employed a full-time assistant to the executive secretary in charge of our voting activities of the State. This particular phase of the Conference program is designed to encourage Negroes in the State of Virginia to become qualified in the use of the ballot.

Another phase that has been conducted during 1957, we have conducted a membership campaign, our fund-raising [fol. 276] campaign, in view of giving aid and assistance to worthy cases. We have, in 1957, appeared before commissions and legislative bodies. During this year we have also attempted to influence the passage of civil rights legislation on a national level. In addition to that, during this year we have assisted in at least one case involving segregation in public education.

Q. Do you have any specific responsibility, Mr. Banks, with respect to soliciting membership for the Association in this State?

A. Yes, I have. My responsibility in connection with soliciting membership—first of all, it is my responsibility to consult with our member branches in determining the membership goal for the year. After those goals have been determined, among my other responsibilities I have to suggest, and, in many cases, help initiate, the actual membership campaign.

Q. Do you have any knowledge as to the number of members in the Association in Virginia this year?

A. Yes, I have.

Q. Do you have a figure as to that? And what is it, if you do?

A. I have a figure. May I refer to my notes?

Q. To refresh your memory.

Mr. Carter: You have no objection?

Mr. Mays: Not a bit.

A. The membership standing for the first eight and one-half months of 1957 is 13,595.

By Mr. Carter:

Q. What was the membership for 1956?

A. For the same period, sir?

Q. Yes.

A. For the same period the membership of the Virginia branches was 19,436.

Q. Do you have for 1955?

A. Yes, I have. The figures for 1955 for the same period were 16,130.

Q. Read off the figures that you do have.

A. We have the same figures for the period for 1954. [fol. 277] Those figures were 13,583. I also have the complete figures for the 12 months period of nineteen—I believe I said '53, the other was '54. For 1953, from January 1, to December 31, the membership was 11,552.

Q. From those figures for 1957, while you are looking at the record, during the eight months your membership figures were what?

A. 13,595.

Q. What was the figures for last year?

A. For the same period last year, the membership was 19,436.

Q. When did it come to your attention, officially, if it did, that there was a drop in membership in the NAACP?

A. It came to my attention officially that there was a difficulty in securing members after our membership campaign had been initiated for 1957.

Q. When was that?

A. It was the latter part of March or the first of April. However, it was brought to my attention earlier in the year that there was a great apprehension on the part of some of our older members, some of our prospective members, that there might be a drop in membership in 1957.

Q. When the drop was brought to your attention, did you do anything about it? And if you did do anything about it, what?

A. Yes, we did. As soon as the drop in membership came to my attention, I immediately made contact with our branches that were then in the midst of their campaign and I talked to the president, the secretary, and some of the members of the membership committees and went into the community; and those individuals invariably told me that the drop in membership—

#### COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Mays: If Your Honor, we object to the hearsay.

Judge Soper: How about that, Mr. Carter?

Mr. Carter: I think what he is trying to do is indicate the investigation that he undertook and how he went about his investigation and this is his description that he is giving. I think he can describe it, Your Honor, without using the words what someone told him. But I gather that he is [fol. 278] attempting to to (sic) describe what he did to determine the reasons for the drop in membership and how he reached his conclusion. I think he can testify to that.

Judge Soper: I assume for purposes of this statement that the climate of public opinion amongst the colored people has some bearing on this case, judging from the record that I read of the pretrial conference. I am not certain how such a thing could be proved in any other way except by one who investigated it, unless you suggest on behalf of the defendants that individual persons should be produced here to give their own personal reaction.

Mr. Gravatt: Are you inquiring of us, sir?

Judge Soper: Yes, I would be glad to hear from you, Mr. Gravatt.

Mr. Gravatt: We do not object to the admission of such evidence if it is properly presented, sir. I do not think that

this man is competent to testify as to what other people have told him was their experience. People who have had first hand experience in the matter may be competent witnesses to testify, but we object to this witness reciting what others have told him, based upon their experience.

Judge Soper: Is it your position that an investigator who goes into a community for the particular reason of ascertaining what the talk is, what the sentiment is, may not testify in regard to it?

Mr. Gravatt: I do not question—

Judge Soper: Do you go so far as to say that? For instance, here are some thousands of people in a community, is it your position that the individual people, the persons who have this feeling of apprehension, or whatever it may be, must be brought up to tell their personal experience?

Mr. Gravatt: Judge, I think we are on a very delicate ground when it comes to the probative value of the evidence.

Judge Soper: Surely.

Mr. Gravatt: The fact that there is a drop in membership may be due to a great many reasons, and I think that it is improper for this witness to testify as to what others have told him. These people who have been out undertaking to secure memberships, to come back and tell him something is not proper. And if those people had personal [fol. 279] contacts, it may be. I am not waiving the right to test their proof, but I certainly do not think that this man would have the right to produce it here second handed, or third handed.

Judge Soper: Suppose that Mr. Banks, himself, made an effort to solicit funds and found that it was difficult to do so for the reason that he might indicate: is that objectionable in your view? Suppose he were a collector himself or a solicitor of members and he found the going hard, might he testify to it in your judgment?

Mr. Gravatt: I would not be prepared, sir, to commit myself to a blanket commitment of that kind.

Judge Soper: That is not a blanket commitment, that is a very specific question. I am asking your attitude on it.

Mr. Gravatt: If he has had first hand experience—

Judge Soper: That was included in my question.

Mr. Gravatt: Yes, sir. If he has had first hand experience I think it might be admissible, certainly much more admissible than the question now before the Court to be ruled on.

By Judge Soper:

Q. In order to clarify the situation, Mr. Banks, will you tell us not for the moment what other people told you, but sort of an investigation did you yourself make?

A. On many instances, we have gone into the branch area. We have been—

Q. I am talking about you, Lester Banks.

A. Well, I have gone into branch areas, sir.

Q. In what?

A. In the areas where we have branches operating. I have been present during kick-off meetings—

Q. When you went there, did you interview their solicitors or did you make any effort yourself to secure contributions among the general public, or is the information which you are now giving us—and I am not questioning the authenticity of it, perhaps it is the only thing you could do—the information that you want to testify so what you gather from people who themselves were the collectors or solicitors?

[fol. 280] A. Well, the information that I want to give the Court, sir, is information that has come directly to me as an investigator of the drop in memberships and also information that has been given to me by our branch officers, the president, secretary or members of the particular membership committee.

Q. The Court is of the opinion that the latter should be excluded. If you had any experience as collector or solicitor among the general public, that may be a different matter, but I do not understand that you are referring to what you did the (sic) solicitor or collector.

A. In that particular instance, I would say that in many instances we have direct contact with prospective members. What I am trying to say, in cases where we have had membership meetings the membership that we have normally been forthcoming for other previous periods, like



periods, those memberships were not forthcoming, regardless of the appeals that were made directly to the prospective members. At these meetings I have had on any number of occasions to ask individuals, "Why haven't you renewed your membership?"

In those instances, individuals have told me that they were apprehensive.

Judge Soper: Go on from there.

By Mr. Carter:

Q. From your own personal investigation, Mr. Banks, and experience in respect to the membership, what reason did you find for the drop in membership?

A. There were a number of reasons, Mr. Carter. One reason that continuously cropped up was the fact that individuals who had previously been members of the association declined to take out a membership in 1957 because of the uncertainty that had been placed upon them in their thinking about these—by the laws that were enacted in the 1956 Special Session. Those individuals, in many instances, were of the lower economic bracket and they did have a fear of having reprisals directed against them. At the same time, these individuals have been certainly conscious of what had happened in other places and the fear was real.

[fol. 281] Q. So if I understand your last answer, Mr. Banks, from your personal investigation of the drop in membership, you determined that it was based upon fear, the result of the passage of the statutes?

A. That is correct.

Mr. Carter: Your witness.

Mr. Gravatt: If Your Honor please, before making a motion to strike out that testimony, I should like the privilege of asking the witness one or two questions, sir, along the line the Court asked him a moment ago when he answered your questions.

## Cross examination.

By Mr. Gravatt:

Q. Mr. Banks, is this a conclusion of yours that your drop in membership is based upon fear, is it based upon reports that have been made to you by persons in the branches who were responsible for soliciting memberships?

A. I testified, sir, that on the particular occasions that I mentioned these reports were not from individuals who were solicitors, but individuals who had conversed with me and had so expressed themselves.

Q. You have gone to see persons and asked them to join the local branches?

A. Yes.

Q. And some of those persons have told you that they did not want to do it—because of what?

A. Because of the uncertainty in their minds as to what would happen to them.

Q. How many such people have you talked to?

A. Oh, I could not give you any number, sir, but in getting around for the first eight and a half months of the year, the number has certainly been quite sizable.

Q. Can you give us an estimate?

A. Oh, I should think certainly I have had occasion to talk to maybe fifty or sixty, or even a hundred individuals.

Mr. Gravatt: We object to the testimony, sir.

Judge Soper: I beg your pardon?

## MOTION TO STRIKE TESTIMONY AND OVERRULING THEREOF

[fol. 282] Mr. Gravatt: We move the Court to strike out the testimony of this witness in regard to the fear in relation to this drop in membership, because the conclusion is not warranted.

Judge Soper: The motion is overruled.

Mr. Gravatt: We except, sir.

Mr. Mays: I wonder if it might be understood that when an objection is made by counsel for one side it is for the benefit of other counsel but, to avoid much repetition, it shall apply to both cases?

Judge Soper: I am not clear how the defendants are lined up here.

Mr. Mays: The explanation is this: Mr. Gravatt represents the Commonwealth's Attorney of Prince Edward; I do not represent the other defendants; I do not represent the Commonwealth's Attorney of Prince Edward County.

Judge Soper: Of course, this Court wants all the light it can get on the subject and all the assistance we can get from counsel, but in order that we may understand the procedure, will the cross-examination of the plaintiffs' witnesses be conducted by Mr. Gravatt, on behalf of the Commonwealth, and by you on behalf of the other defendants?

Mr. Mays: Yes, sir.

Judge Soper: Of course, we are all anxious to get the light. With this array of distinguished counsel at the table, with five cross-examinations, it would extend this matter perhaps more than would be necessary. We would be glad to have you cooperate along those lines.

Mr. Mays: We will certainly try not to repeat the questions.

Judge Soper: Very well.

Mr. Mays: May I proceed?

Judge Soper: Go ahead.

By Mr. Mays:

Q. Mr. Banks, does the conference, that is, the Virginia Conference, spend funds to commence or prosecute further [fol. 283] the lawsuit in which it is not a party or in which it has no pecuniary right or liability, as far as you know?

A. The conference, in situations involving racial discrimination, aids in supplying monies that are used to pay counsel fee and expenses, in litigation of that character, sir.

Q. Even though it is not a party or has no pecuniary interest of its own; is that correct?

A. That is correct, sir.

Q. How is that money supplied? Is it direct to the litigant, or his attorneys?

Judge Soper: I did not hear the question exactly.

By Mr. Mays:

Q. Is the money supplied directly to the litigant, or to his attorney?

A. To answer that question, sir, the money is supplied to the litigant's attorney.

Q. In all cases?

A. In all cases.

Q. Is that an attorney who is approved by the Conference?

Judge Soper: "Proved," did you say?

Mr. Mays: "Approved" by the Conference.

A. Yes, it is.

Q. And in no case do you pay the money to the litigant and let him select his own attorney?

A. As far as I know, sir, the monies are paid to the attorney involved.

Q. Does the Conference instigate, maintain, or give legal advice in lawsuits to which it is not a party or in which it has no pecuniary interest or liability?

A. The Conference does not give legal advice.

Q. Does the Conference act as an agent for attorneys at law in the solicitation of lawsuits?

A. The Conference has not.

Q. And never has in your experience?

A. And never has in my experience.

[fol. 284] Q. Does the Conference expend the funds for the employment of attorneys or the payment of costs in connection with litigation on behalf of any race in this state?

Judge Soper: On behalf of what?

Mr. Mays: Any race, r-a-c-e.

A. In situations involving racial discriminations, the Conference supplies monies for fees and expenses.

Q. And that is supplied directly to the attorney and not to the litigant?

A. Yes.

Q. Does the Conference instigate or attempt to instigate a person or persons to institute a lawsuit by offering to pay the expenses of litigation?

A. No, sir, the Conference does not.

Q. It never looks for plaintiffs?

A. The Conference never looks for plaintiffs.

Q. And always it is an instance where the prospective plaintiff comes to the Conference and asks for help?

A. That is correct.

Q. There are no exceptions in your experience?

A. I can think of no exceptions.

Q. Does the Conference act as agent for an attorney at law or any person or organization in connection with judicial proceedings to which it is not a party or in which it has no pecuniary right or liability in the solicitation or procurement of business for such attorney at law or person or organization?

A. The Conference does not, sir.

Q. Does the Conference, in a lawsuit in which it has no direct interest, give any money or other thing of value as an inducement to an individual to commence or to prosecute further a lawsuit in any court in this state?

A. It does not, sir.

Q. When I say in this state, I mean, of course, to include the federal courts, and your answer is the same?

A. That is correct, sir.

Q. Does the Conference give advice to persons bringing lawsuits when such advice has not been in accordance with the Canons of Ethics of the Virginia State Bar?

[fol. 285] Judge Soper: I think your question is much too vague for anybody to answer. I would not be able to tell what all the Canons of Ethics are, and I think it is rather unfair to ask the witness to charge himself with the contents of all the Canons to answer a question in regard to it. Can you ask it and be more specific?

Mr. Mays: If I did, I would have to go through all the Canons, and I won't take the Court's time in that fashion.

Judge Soper: What you are doing is simply paraphrasing the statute and asking him something which is pretty close to legal questions. We are anxious to get all the information about this, but I am not certain a question of this kind is going to help anybody, including counsel for the defendant.

Mr. Mays: Thank you, sir. We withdraw the question.

By Mr. Mays:

Q. Has the Conference paid or agreed to pay any attorney for acting in a lawsuit to which it is not a party or in which it has no pecuniary interest or liability?

A. The Conference in certain instances has supplied monies for fees and expenses in such cases.

The Court: I wish you would repeat the question. You have the facility of talking very crisply and very quickly. Would the Reporter read the question? Or would you repeat it?

Mr. Mays: My question was, Has the Conference paid or agreed to pay any attorney for acting in a lawsuit to which it is not a party or in which it has no pecuniary interest or liability?

Judge Soper: He has already answered that.

Mr. Mays: All right, sir.

By Mr. Mays:

Q. As far as you know, do the various state conferences and the local branches operate in Virginia in the same manner as they operate in various other states?

A. I am not qualified to answer that, sir.

Q. Very well. Generally speaking, and as far as you know, does the Conference operate in the same manner in [fol. 286] Virginia as it does in other areas of the country? Is that the same answer?

A. The answer is the same.

Q. As far as you know, does the Association solicit plaintiffs in bringing lawsuits?

A. The Association does not solicit plaintiffs in bringing lawsuits.

Q. Is it the policy of the Conference to finance any lawsuits over which it does not have complete control?

A. As I said a moment ago, sir, in instances where there have been discriminations involved, the Conference in some instances supplies the funds for litigation.

Q. And when you do, do you not insist that the case be conducted exactly in the way the Conference directs?



A. That, sir, is a situation that would be between the attorney and the client.

Q. You leave the entire matter of litigation to the attorney and the plaintiff himself?

A. It is left to the attorney and the plaintiff, yes. There are certain broad principles that the Association has; in other words, the Association is against all forms of racial segregation and discrimination, and it would certainly have to fall within those broad limits.

Q. But, within those limitations you leave it entirely to the litigant and the attorney as to the manner in which the litigation is conducted?

A. That is correct.

Q. And the Conference does not interfere?

A. The Conference has nothing to do with the attorney and the litigant.

Mr. Mays: Thank you.

By Judge Soper:

Q. May I ask you this along that line: You have been speaking in answer to Mr. Mays's questions about the Conference. That is the group that you personally represent?

A. Yes, sir.

Q. The lawyers in these cases which are being tried for racial disputes are selected by whom?

[fol. 287]. A. The lawyers are selected by the individuals who have the grievances.

Q. How does the Conference become aware of the grievances?

A. Well, in most instances, sir, individuals who have grievances will bring those grievances either to the local branch or to my office.

Q. And these grievances are of what kind? Can you illustrate it? Are they mostly school cases?

A. No, sir; the grievances are of many varieties. Individuals bring grievances in where they have been victims of police brutality; individuals bring grievances in where they have been denied the use of the ballot; individuals bring grievances in where they have been denied or their children have been denied educational opportunities and

facilities. There are many ways in which those grievances commence.

Q. We may assume, may we, that the reason why the people with these grievances come to your organization is because the public generally has been informed of the work of the Association and the work of the Conference and knows that these two bodies are interested in any question involving racial discrimination or dispute?

A. That is correct, sir.

Q. At your public meetings—you have public meetings, do you not?

A. Yes, we do. The public is informed as to over-all policies and objectives of the Association. The public is well aware of the fact that the Association has since its inception been an organization that has sought to lift the barriers as far as race and caste in America are concerned. The public is made aware of the Association's stand through speeches, through news letters, through press releases, and through public appearances, and it is logical and natural that the individuals who have grievances based upon racial differences would come to the Association.

Q. I assume that the Negro Press carries full accounts of the activities of the Association and the assistance which it gives to the Negro people. Is that true?

A. That is correct, sir; the Negro Press carries full accounts. I might say that not only does the Negro Press [fol. 288] carry full accounts but the Press generally, but the Negro Press in particular.

Q. They do not hesitate to emphasize the activity of the Association?

A. That is correct, sir.

Q. And it is also true, I assume, that in your membership campaigns and in your solicitation of funds the public is made aware of the services that the colored people may expect from the Association and that the funds will be expended for those purposes?

A. Yes. During our membership and fund-raising campaigns the membership as well as the general public are made aware of the attitudes and the effects of racial segregation and discrimination, not only on the Negro but on the

general citizenry of the area, and we attempt in those meetings to get the individuals, particularly the Negro individuals, to understand what their basic rights are and to understand that there are avenues they may seek to relieve those rights if those rights have been violated.

Q. How many colored lawyers are there in Virginia? Do you know?

A. I do not know how many colored lawyers there are, sir.

Q. Now, are not the lawyers who are active in these cases pretty nearly always the same people? Or do you have numerous representatives in these cases where you get complaints?

A. Well, to answer that question, sir, may I elaborate just a little? The branches of the State of Virginia are grouped together in the Virginia State Conference. These branches meet annually. These branches in their annual convention, not only elect the officers and the board of directors of the convention but they also elect what is known as—or confirm what is known as the State Legal Staff. At the present time that particular staff is composed of thirteen lawyers.

Q. Give me the name of the branch near where you live.

A. The Richmond Branch.

Q. The Richmond Branch holds a meeting and, amongst other business, it selects a number of lawyers in whom it [fol. 289] has confidence. How many lawyers are elected by the Richmond Branch?

A. Well, the Richmond Branch, as such, does not elect any lawyers. The Richmond Branch, as well as all of our branches—they have what is known as Legal Redress Committees, and on those Legal Redress Committees, if there are lawyers in the vicinity or in the area of the branch, in all probability the committee will include one or more lawyers.

Q. And are they the same lawyers who are likely to be employed in the cases when they get into court in behalf of the individual complainers?

A. In many instances they are the same lawyers; in other instances they are not.

Q. Now, oftentimes, when some individual who probably never had any trouble in his life before of this kind, comes in and makes a complaint; he is not likely to be acquainted with any of the lawyers, is he?

A. No, he is not.

Q. How does he proceed to make the selection? Does he not have to get your advice or the advice of the Conference in order to get the right kind of a lawyer to bring the case?

A. In that particular situation, when a complaint comes in, if the complaint comes into a local branch, the local branch in many instances will bring that complaint to me, as executive secretary. In other instances the complaint comes directly from the individual. The first thing that I attempt to do is to ascertain whether or not the complaint falls within the general classification of the things that the Association is interested in, that is, cases involving discrimination.

Q. Yes.

A. If the complaint is of such a nature as to not fall within that category, I immediately advise the individual that it is not a case that the NAACP can be interested in. If the complaint falls within the classification of the NAACP's program and if the case seems to indicate that there will be legal action involved, I immediately without further investigation refer the complainant to the chairman [fol. 290] of our State Legal Staff without making any determination.

Q. Then the matter is out of your hands?

A. The matter is completely out of my hands, once I think that the matter might involve some legal aspect.

Q. Do you happen to know what happens from then on, of your own personal knowledge—how it is run by the Legal Staff?

A. Yes, sir, I have some knowledge of it. When the complainant tells his grievance to the chairman of the Legal Staff, in most instances,—and I should say that in some instances, if I may, that the chairman of the Legal Staff might not always be available. If he is not available, then we try to direct the individual to the vice-chairman, and if the vice-chairman is not available, then the individual

is directed to some other member of the staff. After the chairman of the Legal Staff has heard the complaint, if he is of the opinion that the complaint is a legitimate one, falling within the realms of NAACP activity, the chairman of the Legal Staff then makes a recommendation, which is concurred in by the president of the Conference, to the executive board of the Virginia State Conference that the Conference will ~~lend~~ certain financial assistance in the prosecution of the complaint.

Q. The complaint first goes to you or to some other representative of the Conference, then to the Legal Staff, and then goes to the executive committee?

A. The chairman of the Legal Staff and the president may—

Q. The president what?

A. The president of the Conference.

Q. Of the whole State Conference?

A. Of the State Conference, yes, sir. They make a recommendation to the Executive Board of the Conference.

Q. When the Executive Board has determined that it is a proper case for prosecution, what is the next step?

A. The next step is left entirely with the chairman of the Legal Staff from then on.

Q. Of that locality, of that particular branch?

A. No; I am constantly referring, sir, to the state; in other words, the State Legal Staff.

[fol. 291] Q. Well, who selects the lawyers who carry the case into court?

A. As far as I know, sir, the clients themselves select the lawyer.

Q. Who would have more information about that than you?

A. Well, the chairman of the Legal Staff would certainly have more information than I, sir.

Judge Soper: Very well.

By Judge Hatcheson:

Q. May I ask a question or two?

I understood you to say a while ago that a complaining



member usually selected his own counsel. Was I correct in that.

A. As far as I know, yes, sir.

Q. Now, who refers the matter to your office? Who makes the appearance, or, the contact, the individual or his counsel?

A. Well, in many instances the individual brings the matter to my attention or to the Conference's attention. If I think that the matter is something that will involve the law aspect, without hesitation I refer the individual to the chairman of our staff.

Q. You say that in many instances the individual complains. Who makes the complaint in the other instances?

A. By that I simply meant, sir, the individual always makes the complaint, but I was trying to make the distinction that in different branches throughout the state the individual who has the grievance comes to an official of the local branch and discusses the grievance in the first instance, and then the individual in many cases accompanies officials of the branch to my office and the complaint is again aired.

Q. You said "in many instances." What happens in the other instances?

A. Well, in other instances we have made visits to the area itself—I, rather—and again whenever it is determined that there may be litigation involved, the complainant is referred to the chairman of the Legal Staff or someone else who might be in his stead.

[fol. 292] Q. Well, what I was trying to get at was, at what point does the counsel of the complainant's own selection make his appearance?

A. As far as the Conference is concerned, sir, the the (sic) counsel for the complainant makes his appearance when Mr. Hill has recommended that the complainant has a legitimate situation that the NAACP should be interested in.

Q. All right. Up to that point, has the complainant conferred with or selected his own counsel before that time?

A. As far as I know, sir, the plaintiff discusses the legal aspects, or discusses his case with the chairman of the Legal Staff, and from that point on I know nothing about



the procedure until a recommendation has come from the chairman of the Legal Staff, concurred in by the president.

Q. Does the chairman of the legal staff and his recommendation indicate the identity of counsel who will be assigned or who is handling the case?

A. Not in all instances.

By Judge Soper:

Q. You spoke of Mr. Hill a while ago, is he in charge?

A. Yes, sir. Mr. Hill is chairman of our State legal staff.

By Judge Hutcheson:

Q. Could you tell me by whom and at what point counsel is selected? That is, who determines whether Mr. Hill or Mr. Robinson or Mr. Tucker or different ones will appear in that particular case?

A. I don't know what point that particular action occurred, sir, because that is dealing with the legal aspects of it which I, as executive secretary, have no knowledge of.

Q. Perhaps you will know the answer to this: What percent of the cases, approximately, are handled by counsel who are not members of your legal staff?

A. As far as I know, sir, the cases that are given assistance by the association are all handled by members of the State legal staff.

[fol. 293] Q. Who determines the compensation to be paid counsel?

A. The compensation is determined by the board of directors of the Virginia State Conference.

By Judge Hoffman:

Q. Do you have, or have you had, instances in which attorneys are first employed by the litigant himself without any connection or discussion with the association or its legal staff and then thereafter, for reasons either to the litigant himself or to his privately employed attorney, or to the association, other attorneys have appeared in the case? If so, what is the status of the originally privately attorney attorney? (sic)

A. During my experience as executive secretary, I can recall at least one instance—two instances. I recall, some years ago, that Attorney Savage, I believe, from Fredericksburg, who was involved in a case and the Conference gave some assistance to that case. I believe, more recently, an attorney by the name of James Overton has been involved in a case and the Conference gave assistance. Both of those individuals are not members of the State legal staff.

Q. When they render that assistance, do they render it to Messrs. Savage or Overton, as the case may be, or do they render the financial assistance so (sic) other attorneys who are brought in by the association through its staff legal staff?

A. I would think the assistance was rendered by the Conference to the individual case itself. I believe, recalling the case where Attorney Savage was in, and I am trying to recall that, it seems as though the Conference assisted in the payment of the record in that particular case.

Q. That of course would only be expenses and that would go directly to the case. But you previously indicated that the association does make payment to individual attorneys by way of compensation. My inquiry was directed to the line of whether or not the originally employed attorney participated in that compensation or was it paid directly to any other attorney who may have come into the case through the activities of the association, having been re-[fol. 294] quested either by the original attorney or the private litigant to render assistance.

A. I believe, sir, if my memory serves me correct, the case of Attorney James Overton, he was paid directly by the Conference for services rendered in a particular case.

Judge Soper: All right.

By Judge Hoffman:

Q. One moment. When you mentioned Attorney Overton, was a member of the State legal staff associated with him and compensated in connection with that case?

A. Yes, sir; a member of the State legal staff was associated with Mr. Overton.

Q. And compensated, and Mr. Overton was compensated?

A. As I recall, that was correct.

Q. At whose instance was a member of the State legal staff employed?

A. That, I cannot answer, sir. I mean, I actually don't know. I would assume that it was on the recommendation of the chairman of the legal staff, but I don't know.

Q. That was not a matter which would be passed upon by the executive committee?

A. No, sir, that particular matter would not have been passed by the executive committee.

Q. Who determines the amount of compensation in a case of that kind?

A. I would think that the general rule that the Conference has for its attorneys would be the determining factor as to the compensation for the particular outside attorney.

Q. And that is determined by whom, as a general rule?

A. The general rule is determined by the State Conference Executive Board.

Q. Who would determine whether a member of the State Legal staff should be associated with Mr. Overton or whether Mr. Overton would handle the case on his own and be compensated?

A. Well, sir, that would be to my mind a situation where the attorneys themselves that were involved would decide. [fol. 295] Certainly I should think that the chairman of the Legal Staff would make recommendations.

Judge Hoffman: All right.

Judge Soper: Any question, Mr. Gravatt?

Mr. Gravatt: Yes, sir.

Q. Mr. Banks, when the complaintant (sic) that you have been discussing with the Court gets to the point where you have directed him to the Legal Staff, does such member of the Legal Staff as he may get in contact with, the chairman, or the vice chairman or some other person whom you might put him in contact with, determine whether or not the State Conference will support his litigation financially or not?

A. When you say "he",—

Q. I am talking about the member of the Legal Staff with whom the complainant confers at your suggestion?

A. When the complainant is referred to the chairman of

the Legal Staff, or some other member of the staff, for that particular point I have no knowledge of the situation until there comes a recommendation from the staff as to whether this particular situation merits the assistance of the NAACP or not.

Judge Soper: Isn't this correct, Mr. Gravatt, that the matter is first cleared with this witness, Mr. Banks, and then it is cleared with the Legal Staff, and then, if I understood it, it goes further to the Executive Committee or to the governing committee? Is that correct?

Mr. Gravatt: That is what I am trying to find out, where it goes?

By Judge Soper:

Q. What happens after he is cleared with the Legal Staff? That is what Mr. Gravatt wants to know.

Mr. Gravatt: What I want to know is what the Legal Staff decides first.

Judge Soper: They decide whether or not it is a suitable case. They recommend that it be prosecuted or that the Association—

Mr. Gravatt: Has he so testified?

Judge Soper: What happens after that is what you want to know?

[fol. 296] Mr. Gravatt: Yes, sir.

A. What happens after that is this: I do not mean to imply that every time there is a recommendation from the Chairman of the Legal Staff and the President that the Executive Board is called into session and acts on that particular problem. The State Conference, through its Executive Board, has formulated certain broad policies which say that under certain conditions the Conference will assist in the litigation. And when that recommendation comes, or when a case falls within that particular category, then it is automatically—

By Judge Soper:

Q. The fellow who makes that decision is the president of the branch or a member of the Legal Staff?

A. Member of the Legal Staff. The Chairman of the Legal Staff will decide whether or not the complainant has a case that would fall within the bounds of the NAACP's activities. He would recommend or would not recommend that the NAACP lend financial assistance. Before it can be consummated, his recommendation must be concurred in by the President of the Conference.

Q. All right. The President of the Conference has recommended it. Then who selects the lawyer?

A. That, sir, I don't know who selects the individual lawyer. That is a matter between the individual complainant and whoever he wants.

Q. Well, the Chairman of the Legal Staff could give us that information, I assume.

A. I am certain that he could, sir.

By Judge Hutcheson:

Q. Let me ask one other question. I touched on it a while ago, but if you answered it it is not clear in my mind. Who determines the amount of compensation?

A. The amount of compensation has been set by the Board of the State Conference. Does that answer your question, sir?

Q. I suppose so.

A. What I am trying to say, Judge Hutcheson—

Q. Do you have a regular scale of fees?

[fol. 297] A. The Conference has a set fee, per diem fee, that it pays attorneys that are sponsoring or handling cases that the NAACP has.

Q. Office work and trial work?

A. Yes.

By Mr. Gravatt:

Q. Mr. Banks, who is the Legal Committee of the State Conference?

A. The Legal Committee of the State Conference, we call it Legal Staff, I suppose you use the term synonymously—

Q. All right, sir.



A. —are composed of Mr. Oliver W. Hill, as Chairman, Mr. Martin A. Martin, as Vice Chairman; Attorney Roland L. Ealey; Attorney Spotswood W. Robinson, III, a member—also both of those individuals are from Richmond, Virginia; Attorney S. W. Tucker of Emporia, Greenville County, is also a member; Attorney W. Hale Thompson and Philip Walker, of Newport News, they are also members; in Norfolk, we have two members of the staff, they are Attorneys Victor J. Ash and Hugo Madison; in Alexandria, we have member by the name of Attorney Edwin C. Brown; and in Danville, Virginia, we have another member by the name of Gerry Williams; and in Roanoke, Virginia, we have another member by the name of Rubin E. Lawson; making up a 13-man staff.

Q. All of those attorneys, I presume, are approved by the State Conference for representation of complaints that come to the State Conference?

A. Those attorneys are members of the Legal Staff. They have submitted at various times during the annual convention by the staff itself. They are confirmed, they are appointed to the Legal Staff, is confirmed by the Convention in session, by the delegates of the Convention.

Q. Would you answer specifically my question, please, sir: Have they or have they not been approved, by the State Conference for the handling of claims for which the Conference will contribute financially, as attorneys?

A. Those attorneys have been approved by the State [Vol. 298] Conference to carry out the program of the Conference in advising the branches, in advising the Conference, and in carrying on other activities.

Q. Does that mean that they have been approved to handle these complaints that come to you and to the State Conference which are approved for litigation or for legal advice, legal services? They are approved to handle those things?

A. They are approved to investigate those complaints for the Conference.

Q. You mean the Conference has money and the money is used to pay attorneys? I want to know if these attorneys are (sic) approved by the Conference for the payment of their money for their services.



A. Not necessarily, no.

Q. Are there any other attorneys other than these on this committee that are approved by the Conference?

A. The only attorneys that the Conference would be interested in, sir, would be those members of the Conference's Legal Staff.

Q. I just want to get straight—I understood you tell the Court that the complainant, the person who complains, are the litigant, the client, selects his own attorney?

A. So far as I know, he does.

Q. Do you mean to tell the Court that the State Conference of branches of the NAACP pays money to attorneys who are not approved by the State Conference to represent the litigation that the Conference approves as falling within its activities?

A. Mr. Gravatt, I believe I testified a little earlier in answer to a question posed by Judge Soper that in two instances that I recall offhand, in one involving Attorney Savage and one involving Attorney James Overton, that the Conference supplied certain funds in cases that they were involved in.

Q. I did not understand you to say that they paid any attorneys' fees to either of those gentlemen.

Judge Soper: Yes, he did.

Mr. Gravatt: I understood him to say they paid court costs for the printing of records.

Judge Soper: And attorneys fees, too, he said.

[fol. 299] By Judge Soper:

Q. The fact is, to bring the matter to an issue, these 13 who are on the staff are frequently employed in these cases, aren't they, and most of the work that is done for complainants, legal work, is done by these 13?

A. That is correct, sir.

Q. Sometimes, occasionally, others are employed, but these, for the most part, are the ones who do the work?

A. Yes, sir.

Judge Soper: And are paid by the Association. That is what I thought he meant.

Mr. Gravatt: And I want to find out whether there were others.

Judge Soper: He mentioned two.

Mr. Gravatt: What I wanted to find out, are there any others?

Judge Soper: Ask him.

By Judge Soper:

Q. Are there any other lawyers, to your knowledge, that have been employed in these cases?

A: To my knowledge, there are no other lawyers that have been employed in these cases.

By Judge Hutcheson:

Q. You spoke of a lawyer in Fredericksburg, I forget his name, but you said, as I understood, that the Association paid only the cost of printing the brief. Did they pay him a fee also?

A. I don't recall whether they paid him a fee or not.

Q. I don't know whether it is too important, but I wanted it cleared up. I understood you to say that they paid only the cost of printing the transcript.

A. I think I did say in the case of Fredericksburg that I remember distinctly that the cost of the brief was involved. In the other instance, I said so far as Mr. Overton was concerned, we paid some fees in that particular case.

Q. And in that case he was associated with one of the members of the Legal Staff?

[fol. 300] A. That is correct.

Q. And was so compensated?

A. That is right.

By Mr. Gravatt:

Q. So I understand that you have a resolution of your State Conference fixing the fees that ought to be paid attorneys?

A. Yes, there is a resolution that fixes the per diem fees to pay attorneys.

Q. Does that resolution provide, as to what attorneys those fees will be paid to and upon whose approval?

A. That resolution, as I recall it, does not specify any attorney.

Q. Do you have resolutions which do specify what attorneys under the State Conference Branch will be paid?

A. I don't recall that the Conference itself has such a resolution.

Q. Will you file a copy of the resolution fixing the fees and any other resolution of the State Conference which bear upon the general factors within the Conference for the employment and the compensation of the attorneys by the State Conference of Branches, please, sir.

Mr. Gravatt: With the Court's consent.

Judge Soper: Very well.

By Mr. Gravatt:

Q. (Continuing) Will you get those resolutions for us, please, sir and file them as a part of your evidence in this case.

A. I will be glad to.

Q. Now, Mr. Banks, I want to ask you another question. You mentioned that you were in charge of soliciting funds and memberships as a State Coordinator and that a large part of your work has to do with going about to the various branches and putting on campaigns for that purpose; is that correct?

A. That's correct.

[fol. 301] Q. Who are the people, within each branch who are authorized to solicit funds?

A. The persons in a branch area that are authorized to solicit funds are those individuals who are actual members of the Association, more specifically those individuals who serve as members of the Membership Committee. But anyone who is a member of the Association can solicit funds in a particular campaign.

Q. Any person who is a member may solicit funds from any other person whom he wishes to solicit from; is that right? That is, any member of your Association?

A. I think he would have the prerogative to do so.

Q. Do you have any way whatever to control or check

upon what funds those persons collect and what they do with them?

A. The campaign—yes, we do have. Let me say this, Mr. Gravatt. A campaign is being conducted in Nottoway County. The branch itself, in preparation of conducting the campaign, would appoint a membership committee or a campaign committee. Those individuals would be charged with the rest of the branch personnel in actually spearheading the campaign in conducting the membership campaign. The individual who goes out and solicits members—while as an individual, I would have no way of knowing whether or not that individual solicited your membership, shall we say, but when those memberships are reported, first they are reported to the local Membership Committee by the solicitors, and the committee in turn reports them to the branch, the branch section processes the membership lists, that particular list is transmitted to the national office with the national office's share of the membership money, and then after a reasonable time the membership cards come back to the individual members.

Now if the check is incorrect, because I have solicited your membership—if you will please pardon the personal reference—it wouldn't be long, if you were interested in the objectives of the Association—it wouldn't be long if you did not receive your membership card, say within five or six weeks, until you would make inquiry as to what happened to your membership. If I solicited your membership directly, it seems to me your first inquiry would be made [fol. 302] to me, or it might be made to a branch officer. The inquiry might, if it is not satisfied, go to the national office. So that is a check on the solicitation.

Q. So that you depend upon whoever the person may be that paid a membership to get excited because he didn't get a membership card and find out what became of his money? That is, the person that has been solicited. You have no internal check at all on what money is received or what is done with it so far as the man that gets it in his hand the first time is concerned?

A. It seems as though the question you are asking now is a little different from the first question that you asked.

Q. Well, I am asking you now if you have any check on the money received by the person who solicits it.

A. The person who solicits the membership, as we said before, is either a member of the Membership Committee or a member of the branch. It is assumed, and we have certainly implicit confidence in the membership of the Membership Committee and of our branches, that they would not solicit the memberships for their own personal gain. We have certainly the same check as a membership organization, I should think, in soliciting memberships as with the Red Cross, or the Heart Association, or the Cancer Association, or any other membership association.

Q. When you come to contributions that are not-membership fees that are paid to these solicitors, do you have, or does the public have, any way of knowing whether that money is properly applied or not?

A. Yes, the public—

Judge Soper: The public?

Mr. Gravatt: Yes, sir, I am talking about the public who might contribute, I am not talking about just the curious public.

Judge Soper: Hasn't it got to do with the same thing as any other organization which collects money? Haven't they got to take some chance on the people who collect? You don't send somebody along with an auditor and a secretary and watch every solicitor.

Mr. Gravatt: I am not trying to tell you that, sir.

[fol. 303] Judge Soper: I am trying to suggest to you that the witness has answered your question. If you have something else that he hasn't covered, let's get to it.

By Mr. Gravatt:

Q. Is there any check of contributions made by individuals of people who solicit funds for your organization?

A. Yes, there are checks that are made. For example, if I may give you an example, in the Shiloh Baptist Church, and again I am talking about Nottoway County—in the Shiloh Baptist Church, the congregation on a particular Sunday makes a contribution for the Freedom Fund. That particular contribution might be \$50, let us say. That

contribution then would be given to a representative of the branch. The branch, in turn, would subsequently make that contribution to the NAACP proper. The Shiloh Baptist Church itself would receive acknowledgment that a contribution of \$50 has been received, so that the persons in the congregation on that particular Sunday would have knowledge that the money had reached the proper source.

Mr. Gravatt: That is all.

By Judge Hutcheson:

Q. Am I correct in understanding that you testified that among the duties of the members of the Legal Aid Staff are the attendance at meetings of the local branches?

A. No, sir. If I testified to that, I didn't intend to imply that.

Q. What was it that you said about their attendance of meetings of local branches?

A. I intended to convey, sir, that I, as Executive Secretary, attend meetings of the local branch. I believe it was during the discussion where I said that in some instances individuals bring complaints direct to me and other instances I go to the local branch and investigate the complaint. When it is determined that there is a legal question involved, then the complainant is referred to a member of the Staff.

[fol. 304] Q. So I misunderstood you when I thought you said that the members of the Legal Staff attended meetings of local branches?

A. If I said that, I think you did, sir. But it is quite possible that a member of the Legal Staff would attend a local branch meeting. That certainly has happened in many instances. He might be a speaker.

Q. A speaker?

A. Yes, sir.

Q. In his capacity as counsel for the Association?

A. It is possible that a member of the Legal Staff might attend a local branch meeting in his capacity as counsel for the Association.

Q. Is he compensated for that as counsel?

A. As counsel, he would be compensated for travel ex-



pense only, and that usually would be taken care of by the local branch in question, if not by the State Conference.

Q. And he would be a speaker on any particular subject specified?

A. Oh, I don't know what he might speak on. I imagine that would be—it would depend on the occasion, I suspect.

Q. But would his attendance be determined by the Committee?

A. No, sir, I don't think so. I would think if Branch X wanted to engage or to have as their speaker Mr. Hill, they would either contact Mr. Hill directly or they might contact Mr. Hill through me, saying that we would like for Mr. Hill to speak on such and such an occasion.

Judge Soper: Any further questions?

Mr. Carter: I have nothing further.

Call Mr. Wilkins.

Roy WILKINS, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you give your name for the Court's benefit?

A. My name is Roy Wilkins, sir.

[101.30.] Q. Where do you live?

A. I live at 147-15 Village Road, Jamaica, New York.

Q. What job are you presently holding?

A. Executive Secretary of the National Association for the Advancement of Colored People.

Q. How long have you held that job?

A. Since April, 1959.

Q. What job or jobs, if any, did you hold in the Association prior to being Executive Secretary?

A. Oh, I was Assistant Secretary and I was Administrator, and also in combination with the assistant secretaryship I was editor of The Crisis Magazine.

Q. How long have you been connected in an official capacity with the Association?

A. Since 1931.

Q. Would you describe your duties as Executive Secretary, please?

A. Well, the duties are, of course, of a general administrative nature, supervising the whole work of the Association, its program, staff, and of the carrying out of the policy as laid down by the Convention and the Board of Directors.

Q. When was the Association organized, Mr. Wilkins?

A. The Association was organized in 1909 and incorporated some time thereafter, I don't have the date.

Q. You do know that it is a corporation.

A. It is a corporation.

Q. This is Plaintiffs' Exhibit No. 1. Would you identify it.

A. This is a copy of the Articles of Incorporation, Certificate of Incorporation. The date on it is May 25, 1911.

Q. Would you read into the record, sir, the aims and purposes as set forth in the Articles of incorporation of the Association.

Judge Soper: Isn't that part of the record already as an exhibit?

Mr. Carter: Yes, sir.

Judge Soper: Do we need to read it at this time?

[fol. 306]

#### OFFERS IN EVIDENCE

Mr. Carter: No, sir. I would like to offer this in evidence.

Judge Soper: Very well. Give it to the Stenographer and let him mark it, or to the Clerk.

(The document referred to, marked Plaintiff's Exhibit No. 1, was filed in evidence.)

By Mr. Carter:

Q. I want to show you two other documents, Mr. Wilkins. I show you a document marked "Constitution of the National Association for the Advancement of Colored People." Will you identify it and indicate whether it is the latest document?

A. Yes, sir; this is the constitution of the corporation. This is the current one. It says "Amended June 1955," and an article on an action of the Board on May 13, 1957. This is the latest copy.

Mr. Carter: I would like to offer this, too.

Judge Soper: Very well.

(The last-mentioned document, marked Plaintiff's Exhibit No. 2, was filed in evidence.)

Q. I show you a document, "Constitution and By-Laws of the Branches of the Association," and would you please identify it and indicate whether this is the current constitution and by-laws?

Judge Soper: Of branches?

Mr. Carter: Of branches, yes, sir.

A. This is the current constitution and by-laws for branches. It is dated March 1956.

Mr. Carter: I would like to offer this in evidence.

(The last-mentioned document, marked Plaintiff's Exhibit No. 3, was filed in evidence.)

Q. Now, what is the organizational structure of the Association plaintiff corporation?

A. You mean how it is organized?

[fol. 307] Q. Yes, sir.

A. Well, it functions through a board of directors--a convention, really, at the beginning. A convention of delegates of the branches meets annually and adopts resolutions which become the policy of the body for the ensuing year. The board of directors carries out this policy and adds to it or amplifies in accordance with the provisions of the constitution, and underneath the board of directors there functions a staff, an administration staff headed by the executive secretary (a salaried administrative staff) and these staff members preside over the functioning of the local branches throughout the country and the state conferences of branches. The officers of the corporation, non-salaried, fit in beneath the board of directors and above the staff, that is, the president, the treasurer, and assistant

treasurer, the vice-chairman and chairman of the board, who are officers of the corporation who are non-salaried.

Q. How many members of the board of directors are there?

A. Forty-eight.

Q. How are they elected?

A. They are elected through a process—they are elected by the branch. Do you want me to go into detail?

Q. Well, just generally.

A. It is not a self-perpetuating board; it cannot elect its own members. They are elected by ballot conducted in the branches themselves.

Q. How many are elected each year?

A. One-third each year.

Q. Are the board members paid any compensation for their services?

A. No compensation to board members.

Q. Are they paid any compensation at all?

A. A small contribution is paid through traveling expenses at the time they attend the board meeting, if they attend it. That is, sir, there is no blanket sum set aside for that.

Q. How often does the board meet?

A. The board meets eleven times a year.

Q. Where does it meet?

[fol. 308] A. It meets in the national headquarters in New York City, except for a meeting which is held during the annual convention, in whatever city that might happen to be.

Q. Where is the principal office of the New York corporation?

A. At 20 West 40th Street, New York City.

Q. Other than at that office, does it have any salaried employees at any other offices? Does it maintain any offices other than there, I should ask?

A. Yes; we have an office in San Francisco.

Q. Any place else?

A. We have an office in Washington.

Q. Any place else?

A. We have an office in Dallas. These offices are main-

tained by the corporation. San Francisco, Dallas, Atlanta, Washington.

Q. In those offices outside of New York, does the corporation have salaried employees?

A. We do.

Q. Has the corporation any local affiliates or units, and if so, describe them.

A. Its branches?

Q. Yes.

A. The branches of the association are unincorporated units which exist and have been organized in forty-three or forty-four states and the District of Columbia and the territory of Alaska. They number roughly, varying, of course, around a thousand units—branches, we call them officially.

Q. Are there any other units of the corporation?

A. Well, we have also state conferences of branches, and these exist in a number of states in which they get together and organize them.

Q. Well, let us take a branch, Mr. Wilkins. How does a branch come into being?

A. A branch is organized usually by a group of persons in a community, feeling that a unit of the association would be useful and helpful, and they write and make application to form a branch. They send for a blank and the required information, and they enlist or enroll the minimum number required for a branch and then [fol. 309] send in those names and addresses in a formal application for a charter. This is the way a branch comes into being.

Q. How does one become a member of the NAACP?

A. Oh, by paying dues—paying dues.

Q. Is this your sole source of income?

A. No, it is not our sole source of income, but it is the principal source of income.

Q. What are the other sources of income?

A. Well, the other sources are contributions of varying kinds, outright contributions; some of them are benefits—the usual methods by which voluntary organizations are supported.

Q. Well, are there any units or affiliates of the New York corporation in Virginia, and if so, what are they?

A. Oh, yes, we have a State Conference of Branches in Virginia—Virginia State Conference of Branches, and I am not certain of the number, but a number of branches throughout the state.

By Judge Soper:

Q. What are the membership dues, Mr. Wilkins?

A. The minimum membership dues are \$2 a year and they run all the way up to practically any amount anyone wants to give as a membership, but the highest membership is that of a life member, of \$500.

By Judge Hoffman:

Q. Is that \$2 a year for the national organization as such, or is that divided between the conference branches?

A. It is divided. The \$2-minimum membership, we call it, is divided fifty-fifty; one dollar stays in the local chapter that solicits the membership and one dollar is required to be sent to the national office.

By Judge Soper:

Q. How are the expenses of the State Conference paid?

A. The State Conference expenses are paid, some of them, through an arrangement between the State Conference and the branches in the state and the national office. [fol. 310] The usual method, Judge, is to have the branches in the state agree to pay an amount of money out of their share of the membership, and they send that to New York along with their report of membership. For example, on a \$2-membership, instead of sending us one dollar, they will send us \$1.00 and we in New York will add 10 cents to their 10 cents and mail back to the Conference the 20 cents per member in that state. Perhaps I ought to say for the sake of Virginia, which is a little different, Virginia pays more than the 10 cents to us. The branches in the state are free to tax themselves as they see fit and it happens that Virginia, I think, pays the highest propor-



tion of its—we do not match it in the total; we only agree to match a dime of it; but Virginia pays more.

By Mr. Carter:

Q. For the upkeep of the State Conference?

A. For the upkeep of the State Conference, yes, sir.

Q. What kind of activities, Mr. Wilkins, does the Association engage in? What does it do?

A. Well, your program generally is to get rid of—a short way to say it—to get rid of second-class citizenship, but it is to erase segregation and discrimination on account of race and color. We have numerous activities under this general heading and we proceed generally under three broad types of activity. We have processes in the courts, legal activity, and we have what might be designated as legislative activity, and finally, under the broad heading of educational work—lectures and writings and publications and speeches and types of persuasion on the public to accept our cause.

Q. Would you describe in more detail what you mean by the first category, legal activity and legislative activity?

A. Well, under legal activity we have sought to assist in securing the constitutional rights of citizens which may have been impaired or infringed upon or denied. We have offered assistance in the securing of such rights. Where there has been apparently a denial of those rights, we have offered assistance to go to court and establish under the Constitution or under the federal laws or accord- [fol. 311] ing to the federal processes, to seek the restoration of those rights to an aggrieved party.

Under legislative activity, we have sought the enactment of laws which would do away with racial discrimination and segregation and which would enlarge the opportunities of minority group citizens which hitherto had been restricted because of their race or color, and we have sought the repeal of laws which we felt were denying constitutional equality, and we have campaigned and carried on educational ventures designed to build the public opinion which would result in these objectives through the legislative process.

Q. Well, Mr. Wilkins, can you give examples of various activities that you feel would fall into any of these categories that the association is now engaged in specifically?

A. Well, at the present time, for example, under the matter of legislation, we have just finished on the national level a campaign for the enactment of a civil rights bill in the Congress.

In New York State at the present time, on the state level, we are at work in an effort to secure the strengthening of state legislation having to do with migratory farm labor and the conditions under which they live and work—application of the minimum wage laws to them, the application of certain sanitary statutes and housing statutes, and also the application of the state school attendance to them, and that sort of thing. This is a current activity in New York State on the state level.

On the local level, we have a great variety of items: one, the effort by local chapters to secure the enactment of fair employment practice ordinances of city councilmen.

On a state level of a different kind, in California—I think our state organization in California is not supporting a suit in the federal courts in the matter of housing, discrimination in housing.

I do not recall offhand all the different types of local activity.

By Judge Soper:

Q. Does it have anything to do with places of amusement?

A. Yes, Judge, here and there, there is activity on the [fol. 312] part of the local chapters with respect to admission to roller skating rinks and theatres and other places of amusement. This usually takes place under existing state civil rights laws. Some local chapters concern themselves with golf links and the use of municipal golf courses, but the golf business—I don't think we have concerned ourselves as an organization—or let me put it this way: We have considered that there are some other matters of more pressing concern than using our energies on the golf courses, although we have not discouraged any private citizens from bringing suits on these golf courses.

Q. And you have been interested in park cases?

A. Park cases, yes, sir, especially the state parks.

Q. How about hotels and restaurants?

A. We can only move against hotels and restaurants in the courts when there is a state statute which presumably guarantees equal treatment, or, of course, we could move in the original instance where some citizen wanted to sue on the ground that he was entitled to enjoy these.

By Mr. Carter:

Q. How is the program and policy of the Association carried on in Virginia?

A. Well, we don't differ in the program in Virginia from any other state. We carry on here and have carried on local activities in the state of Virginia. We have done some, or have attempted to do some legislative work; we have done educational work—lectures—and we have done of course fund raising. I did not mention fund raising when you asked me about activities, because I did not conceive of that as programmatical. Fund raising has been carried on at all times, but it is an activity and, of course, we have it in Virginia.

Q. Are these activities of the organization as carried on in Virginia, carried on by employees from the New York corporation, or are they carried on by branches and members in Virginia? Or just how do you function in this state?

A. We don't have any employees of the New York corporation in Virginia. We have no staff of the national [fol. 313] corporation here in this state as we do, for example, in North Carolina, but we don't have in Virginia. The work in Virginia is carried on by the branches in Virginia, by the State Conference of Branches in Virginia, with the advice and consultation of national officers if they call them in.

Q. Well, on the question, then, of fund-raising, Mr. Wilkins, does your corporation get any funds from branches, State Conference members, and contributors in Virginia?

A. Oh, yes, we get money from Virginia, and various other sums.

Q. Do you know the total of the funds that were received by the New York corporation from Virginia?

A. I had those figures looked up for me by our accountant. We did receive a sum for the first eight months, I believe, the figure was made up for.

Q. Do you have those figures?

A. I do not have them.

Q. Do you have them there?

(A brief case was handed the witness.)

A. Now, the question was—I'm sorry.

Q. How much money the corporation received from sources in Virginia in 1957, and give me the dates and the latest figure that you have.

A. I have here a figure from our accountant for January 1, 1957, through August 31, 1957, and the total given for that period is \$37,470.60.

Q. Do you have any figure for a similar period in 1956?

A. No, I do not have a similar period. I have a figure for the entire year of 1956.

Q. What is that?

A. \$49,996.44.

Q. Do you have a figure for 1955?

A. I have one for the entire year. It is \$39,435.56.

Q. Do you have the figures, Mr. Wilkins, with respect to membership in the NAACP?

A. You mean the individual members, total membership?

Q. Yes. Would you give us those figures for the current year and back as far as you have them?

[fol. 314] A. I have a figure for January 1, 1957, through August 23, 1957, and the total for the state is 13,595 members. Now, for the same period in 1956, which is roughly eight months, the membership total was 19,436, and for the same period in 1955, that is, the first eight months, it was 16,130, and for the same period in 1954, again the first eight months, it was 13,583.

Q. Now, Mr. Wilkins, are you familiar with Chapters 31, 32, 33, 35, and 36, the laws that are involved in this litigation?

A. Well, sir, I can't say that I am familiar with them. I know about them.

Q. You know in general—

A. In general, the language, yes.

Q. You know in general what is required by these various provisions, do you not? Let us take Chapter 31, which requires an organization that solicits funds for litigation to list its contributors, its members, and sources of income, et cetera. What burden, if any, would be placed upon the Association by being required to comply with that statute?

A. Oh, to list all the members and contributors, also sources—oh, well, I have just quoted here that we have 13,595 members in the state for 1957 up through August. The listing of 13,595 names and addresses, we would have to have a staff to take care of the clerical work for Virginia alone, besides the burden it would force upon the organization from the branch level on up. These names do not come in all at once. It is ~~not~~ possible to say that this is a job that could be done in two weeks in July, two weeks in April, or two weeks in October. This would be a burden, that one item alone.

Q. Are there any other burdens that your office would have in being required to comply with this law?

A. These lists, as I understand the law, would have to be made periodically to either the Secretary of State or to a designated official of the State of Virginia. All of this clerical work and recording would place a burden on our Association which I would say should be obvious would hamper its efficiency as a functioning organization in carrying out its main purposes.

[fol. 315] Q. The laws that forbid an organization such as the plaintiff corporation to aid in litigation, what burden would that place upon your activities by your compliance with it?

Judge Soper: I don't think I caught that question.

By Mr. Carter:

Q. (Continuing) The statutes forbidding the corporation from aiding in litigation, giving financial assistance in litigation, would that place any burden upon your activities?

A. Well, this statute could very well wipe out—

Mr. Mays: May I inquire what statute is now mentioned?

Mr. Carter: We are talking now about Chapter 31—the effect of Chapters 33, 35 and 36, sir.

A. This would seriously impair the work of our Association and its support by the general public. Since one of our three major lines of activities is seeking legal redress of grievances, if we were debarred from assisting in any way a citizen in establishing his constitutional rights, either prevented from offering him legal assistance or from contributing to the costs of a legal action, this would impair an important one-third of the activities of the Association. As a matter of fact, it would impair the establishment and protection of these rights, since that is one of our main pieces of business.

Mr. Carter: Your witness.

Cross examination.

By Mr. Mays:

Q. Mr. Wilkins, I understand that through the 31st of August of this year, you had collected in Virginia something over \$37,400, 13,595 memberships being involved. That is \$1 apiece on membership, isn't it?

A. Well, it would be—no, that is 16,000 members, roundly speaking, and \$37,000. If it were \$1 apiece—or do you mean \$2 apiece?

[fol. 316] Q. What I am getting at is a substantial amount of this money coming from contributions over and above the membership fees? Isn't that correct?

A. I am not sure that I could agree that a substantial amount—certainly our income is composed of memberships and other funds. How much of this is membership money and how much is not—because membership money, when I discussed it, I was discussing the minimum membership only, the \$2. There are other categories of memberships, \$2.50, \$3, \$5, and \$25 on which the division of money is not on a 50-50 basis, and therefore it would come to the New York office as membership money. So that as a general yardstick, you take the \$2 business, but it doesn't work out that way.



Q. Well, these contributions by way of membership or otherwise come in continuously all during the year, do they not?

A. Well, not continuously. We are open for business all during the year and would like to see them come in continuously, but they come in in certain times of the year, depending on when the local branches decide is the best time to conduct their membership campaign.

Q. Ordinarily, what time of year are the majority of those meetings held?

A. Well, the vast—not the vast majority, but the majority of them are held between February and July 4.

Judge Soper: Speaking of Virginia now?

Mr. Mays: Yes, I am speaking of Virginia.

A. (Continuing) Well, now, Virginia I am not able to say that is so, although I suspect it is because that is the national trend. We do have a substantial minority of branches conducting their membership campaigns in the fall, September, October, and November. But I would say that 60 percent at least conduct theirs between February and July 4.

By Mr. Mays:

Q. Do you know, of your own knowledge, Mr. Wilkins, whether or not the Association contributes any funds to individual litigants or does your Association contribute any funds at all?

A. You mean to give money to—

Q. Individual litigants.

A. Individual litigants or plaintiffs for their own use?

Q. No, his own use in connection with litigation.

A. We don't give money to individual litigants.

Q. That would come only from the Fund? That would come only from the other Association Fund?

Judge Soper: You mean from the local association, Mr. Mays?

Mr. Mays: Yes, sir.

A. I am sorry, but I don't believe our local associations, our local chapters, give money to individual plaintiffs.

When I spoke of assisting them, I meant that we would either offer them a lawyer to handle their case or to help to handle their case and pay that lawyer ourselves, or we would advise them, if they had their own lawyer, would advise with them or assist in the costs of the case. I didn't mean to imply, and I hope to make clear now—we do not make payment to individual litigants or plaintiffs under any pretext whatsoever. Even if he says, "The record in this case will cost me \$1200. Will you give me the \$1200?" We never do that.

By Judge Soper:

Q. What do you do? You pay the bill?

A. Judge, if our lawyers, or Board of Directors, or if the local branch in its Legal Redress Committee, have previously decided that this is a worthy case and a case that comes within our activity, then we will offer to assist with the costs. And the dealings are never, however, done with the plaintiff or the litigant. No money passes to him. That is, insofar as I know, and I have handled a great deal of this.

By Mr. Mays:

Q. Does your Association, at any time, act as agent for attorneys in solicitation of lawsuits?

[fol. 318] A. As an agent for attorneys?

Q. Yes, or in any capacity.

A. No. I am not a lawyer, so I don't know the exact legal connotation of these words. But if I understand "agent" correctly, it would mean that Law Firm A or Law Firm B, or Lawyer A or Lawyer B, would have a working understanding or relationship with our Association that in certain circumstances and certain types of cases we would call him in or refer this case to him or employ him to handle this kind of a case. Is that what you mean by "agent"?

Q. That is right.

A. We do not act in that capacity.

Q. Does your Association, as far as you know, ever decide upon bringing some particular piece of litigation

and then go seeking for a plaintiff in order to get into court?

A. I can do better with seeking for a plaintiff than I could with agent.

Q. I hoped you could.

A. We do not go out into the general population and solicit a man by saying, "Don't you want to challenge such and such a law?" or "Don't you want to go to court on this or that point?" I think it is fair, however, and it is a matter of record, that we have said publicly, on many occasions, that such and such a law we believed to be unconstitutional and unfair, and we believe that Negro citizens are deprived of their rights by this statute, or this practice, and that we believe it ought to be challenged in the courts, which is the proper place to challenge such legislation, and that we urge colored people to challenge these laws and that if any one of them steps forward and says he wishes to challenge such a law, we will agree to assist him, providing the case passes all of the requirements. But for actually going out and buttonholing people and saying, "Will you come in and help us test this?" we don't do that either.

Q. Let's see just how we do it. You will have a public meeting and advertise it, will you not, to get as large an attendance as possible?

A. Well—

[fol. 319] Q. Then you state to the people who are gathered there, do you not, that there are certain laws or a law which is violative of their rights and you feel it should be tested in the courts; you do that, do you?

A. Well, let me say this—

Q. Will you just answer that yes or no and then explain?

Judge Soper: What was the final question?

Mr. Mays: I will ask the Reporter to read it.

(The following was read:

"Then you state to the people who are gathered there, do you not, that there are certain laws or a law which is violative of their rights and you feel it should be tested in the courts; you do that, do you?"

A. I will answer yes and then I will—in answer to the other hypothetical questions prior to this one, I did not, and do not, concede that we ever called a meeting for the purpose of outlining an unconstitutional law and inviting the people at that meeting, as the business of that meeting, either the sole or principal business, to challenge this law. The way it works out is that in the general membership meetings that we will have, or monthly mass meetings that will be held, in which a number of topics may be discussed in the general front of battle against discrimination and segregation, a particular statute or a particular situation may come into the discussion, the meeting not being called for that purpose, and not being called for the purpose of trying to encourage a given number of persons who might have attended the meeting to enlist for the challenge of that particular law. It is only a part of the general business of the Association and it might emerge from such meetings, but the meetings themselves are never called for that purpose.

Q. Is it not true that the subject of bringing up suits of that sort is on the agenda of the meeting at the time it is called?

A. No, I am sorry, I don't know of any meeting whose agenda I have seen or participated in where they have ever had on the agenda the matter of getting plaintiffs for challenging certain laws.

[fol. 320] Q. Isn't it true that at these meetings from time to time papers already prepared are submitted to people to be signed authorizing someone to act for them in bringing suits? Aren't those papers prepared and submitted at those meetings and haven't people been urged to sign them, whatever they may be?

A. As a regular course of business, I would say no. I do not say that this has not happened on certain occasions, under certain circumstances, and with reference to certain particular actions of the moment. But as a matter of course of business, year in and year out, month in and month out, as a part of the occasional or regular agenda, no.

Q. What instances come to your mind in what I have described that took place?

A. Well, I don't know that—I don't know that we are at one on your description of the situation, but it occurs to me that after the Supreme Court decision on school desegregation cases, a great many parents were wondering how to proceed under the new statute, the new opinion of the Court, and they were at a loss as to the proper steps to take. They did seek advice from us as to what to do. This, I do not have to emphasize for this Court, that is a matter of great moment to many persons, parents, children, everywhere, and they did come to us and say, "What do you advise us to do?" "How can we proceed?" "The Supreme Court has said there shall be no more racial segregation, the Supreme Court has said that I can go to the school I want to, how can I go to this school?"

We did prepare information for them on that occasion, the precise nature of which I don't know. I am not a lawyer, but I know we did offer as much advice and as much assistance as we could to parents who were genuinely in the dark as to how to go about taking advantage of this new freedom which the Supreme Court had declared for them. This, as a matter of fact, is one of the best illustrations of our functioning as an organization, this kind of a crisis, this kind of seeking for information and advice.

Q. As a matter of fact, wasn't it true, or do you know whether it be true or not, that in Prince Edward County, Virginia, that such a public meeting was held and papers were prepared and people were invited to sign them so [fol. 321] they would be plaintiffs in litigation that the NAACP meant to bring, the very litigation that was altered in the decision which you referred to in the Supreme Court of the United States?

A. I know that such a meeting was held, in fact, there were similar meetings held all over the country. The colored parents—and you will recall that the Supreme Court decision of 1954 was based on five consolidated cases, one from Kansas, Virginia, South Carolina, and so on, which fact indicates in itself that colored parents everywhere were concerned with this problem and were making an attack upon it. I do not deny, sir, that meetings of this kind were held in Kansas, and Virginia, and in other states which

did not get their cases up in time to be consolidated. So I wouldn't doubt that this took place at all.

Q. You referred to your income in Virginia; how does that compare with your income in the country as a whole? Not in detail, but pick out any time this year or last.

A. I am sorry, I am not able to make a comparison because I do not have an accountant's figures for the income as a whole.

Judge Soper: In making the comparison between Virginia and the country as a whole, are you asking the question on the basis of the Negro population in this state?

Mr. Mays: No, sir, I was simply asking the amount of money.

Judge Soper: How much proportion of Virginia's population the whole revenue is?

Mr. Mays: That is right.

By Judge Soper:

Q. You don't have the figure?

A. I do not have the over-all figure, but I will be very happy to get it, sir.

By Mr. Mays:

Q. You remember, do you not, certain litigation in Texas under the name of the State of Texas v. The National Association for the Advancement of Colored People?

A. Yes, I do.

[fol. 322] Q. You testified in that, I believe?

A. I did.

Q. In Exhibit S-40, which was filed in that proceeding, it is indicated that for the year ending December 31, 1954, the total income for the NAACP was \$466,065.48; is that approximately correct?

A. I think so. I think that was taken from a certified public accountant's audit. That was for '54, did I understand you to say?

Q. That is correct. It was stated, in answer to defendant's interrogatories, that most of the attorneys for the plaintiff in the various segregation suits in Virginia simply work



in cooperation with the Association in cases in which it is interested. Please tell the Court what you mean by the word "cooperation." Just how does it work?

A. I am sorry, in cooperation with the—I don't remember the interrogatory.

Q. We propounded some interrogatories.

A. Yes, I know you did.

Q. You indicated that most of the attorneys for the plaintiffs in the various segregation suits in Virginia simply worked in cooperation with the Association itself?

Mr. Carter: Mr. Mays, would you show Mr. Wilkins those interrogatories?

Mr. Mays: While we are looking for that, I will pass on, if Your Honor please.

Judge Soper: Yes, Sir.

A. May I be permitted to go back to your question about the proportion of the income from Virginia?

By Mr. Mays:

Q. Yes.

A. You read from Texas testimony the total income for 1954 of \$466,000.

Q. That is what I get from the exhibit.

A. In partial indication of some answer to your question about proportion, I find here that the State of Virginia in 1954, our income from Virginia was \$13,050.33 as against the total income of \$466,000. But I will still get the figure you asked for '56 or—'56.

[fol. 323] Q. I should like to have it as current as possible.

A. Very good.

Q. There are a series of responses to interrogatories and I will read one by way of illustration. In answer to Interrogatory No. 71: "Victor Ash has worked in cooperation with the plaintiff corporation in cases in which it has been interested and he is a member of the Legal Committee of the Virginia State Conference of NAACP Branches."

Now I will ask you to state to the Court just how the attorney functions in these cases from the time he is em-

ployed on through and what direction he gets from NAACP himself.

A. He functions, as I understand this, and here again I am over in legal operations where I am not a lawyer and I only have—but as I understand Mr. Ash's function and all others similarly situated in the State of Virginia, they function primarily as for the Virginia State Conference of Branches. I believe it states there that they are members of the Legal Redress Committee of the State Conference of Branches. Now their chief functions under that aegis and the courts "in cooperation with," I assume covers consultation on tactics and procedure.

Q. Of course you signed the interrogatories so it is your word and I am merely trying to find out what you meant by that word. Now you have heard and I do not want to repeat it, some testimony by Mr. Banks on this subject of how counsel are employed.

A. No, I didn't hear it, I was out of the room.

\* Mr. Mays: I am sorry, I thought he was present representing the corporation.

Judge Soper: He went out at your request.

Mr. Mays: Yes, sir. I didn't mean to preclude one representative of the corporation being present, but maybe they have someone doing that.

Judge Soper: Mr. Marshall is here.

Mr. Marshall: I am for one corporation, may it please the Court.

[fol. 324] By Mr. Mays:

Q. Do you know just how the plaintiff employs lawyers or the Association employs lawyers for him when he has a grievance to present to the Court? I am speaking now of the State of Virginia, which I take it is the same as other states?

A. Well, state laws being what they are, they might not be identical in all states.

Q. Speak for Virginia, then.

A. I have no personal knowledge of the way that lawyers are employed in the State of Virginia. As I say,

they are employed largely, if not completely, by the State Conference of Branches. We do not counsel with the State Conference of Branches on how they shall employ their lawyers, except, of course, since our name is connected with the enterprise, we insist that all of these rules be on an ethical basis. But we have no—we don't lay down any rules and regulations for them, they employ their lawyers and—

By Judge Soper:

Q. Does the Legal Staff resident in New York counsel with the Virginia lawyers in Virginia cases and advise and help them?

A. They do, sir.

By Mr. Mays:

Q. Do you have any knowledge of how the relationship is created between the plaintiff and the lawyer? Do you have any knowledge at all of how that is created?

A. Well, in describing the ways in which the corporation carries on its legal work, I attempted to indicate that where a plaintiff wishes to enter this litigation and comes to us and asks for assistance, that if he comes within our scope, we offer certain assistance. Now, since the Virginia State Conference operates as a part of us, as an auxiliary or affiliate, I assume that the same process comes into being, as you say, in this same way. The plaintiff or aggrieved citizen comes to the Virginia State Conference of Branches, [fol. 325] or his particular branch in his locality, and says, "It is thus and so with me and I want some help, I don't think it is fair." Let us say that the Petersburg branch will feel that maybe this question is too big for them to decide, but they feel it is a good one. They will then take it up with the Virginia State Conference of Branches and ask for its advice or assistance or decision as to whether they go into the case, and I assume that the Virginia State Conference of Branches would rely on themselves and the Legal Redress Committee as to whether we should offer assistance in this Petersburg case. Very often the decision is not to offer assistance in the Petersburg case, or the Roanoke case.

Q. You assume and have used the word "assume" many times, but is that the limit of your ability to tell what actually takes place in Virginia?

A. I have no personal knowledge. I sit in on no conference of lawyers or plaintiffs in a case. If a plaintiff should come to me from Virginia, all the way up to New York, and say, "Mr. Wilkins, I have such-and-such a thing that has happened to our family and I think it is wrong and we want the Association to help us," I would say to him, "You consult the Virginia State Conference of Branches where you are and if they make a decision on the matter, then we will see if there is anything we can do to help," but as to the actual process in what goes on, I don't know.

Q. Well, the statement of your testimony, therefore, is that you insist on everything being ethical—that much we have here—but do you also insist, or does the Association insist that you take complete control of the litigation in event you finance it? Is that a policy?

A. I don't understand what you mean by "complete control."

Q. Make the decisions, decide what to do, and run the case.

A. Well, I have heard our lawyers say many times that they cannot do anything that the plaintiff does not want done. I have heard them stop in the middle of a case, after they had reached a certain stage, and I have sat in on these conferences that took place on strategy, in which they [fol. 326] have said, "Well, before we can go further, we will have to find out what the plaintiff wants to do."

Q. Have you run into any instances where the plaintiff wanted to do something different from the lawyer?

A. I know of no such instance where the plaintiff has said, "You want to do this and I want to do that." Our lawyers have felt bound to do what the plaintiff wanted to do.

Q. I am asking you, have you known of any instance of disagreement between the plaintiff and the lawyer?

A. There might have been disagreement, but as far as I know, that disagreement was resolved, one way or the

other, either from the plaintiff's point of view or from our point of view.

Q. You don't know of any case where the Association or the lawyer was in disagreement with the plaintiff as to what should be done in a case?

A. I know of no such specific case.

Q. Will you explain to the Court, if you can, what the functioning of the Legal Committee in Virginia is—the Virginia State Conference?

A. Now, here again this is a matter of procedure within the State Conference. I have no intimate connection with the running of the State Conference.

Q. I will put it this way—I am not trying to explore your ignorance; I am merely trying to pursue the facts as to the things you do know, without wasting the Court's time, and I do not want you to give a lot of assumptions, unless the Court wants to hear it.

A. I don't know.

Judge Soper: I suppose he could tell you, if you want to know it, what the general practice is throughout the country.

Mr. Mays: That is quite another question.

Judge Soper: You don't want that?

Mr. Mays: I am coming to that.

By Mr. Mays:

Q. I am asking now the same question as to the country as a whole. How do you function in other states? Do you know about any of those?

[fol. 327] A. The State Conference of Branches in other states has a Legal Redress Committee and this Legal Redress Committee handles the details of arrangements between the plaintiffs in the case and the Association. That is the general procedure. I am not familiar with the details of the arrangements.

Q. Well, you would say, would you not, that your knowledge of how the Legal Committees work in the other states is no more than your knowledge of that in Virginia?

A. Probably so.

Q. What about the Legal Committee of the Association as a whole?

A. The Legal Committee of the Association as a whole functions, here again, or maybe it is a pattern, as the Legal Redress Committees of the State Conferences. They are to advise us on general legal procedure, to see that we do not exceed the bounds, to see that we do not take cases that are not germane to advancing the cause. I think, if it has not been said, that it will be said that we do not consider ourselves a general legal defense society. We do not attempt to function in behalf of every colored citizen in the United States who feels himself aggrieved in some way and wants some sort of legal redress, and our Legal Committees, national, state, and local, are for the purpose of advising our lay chapters and lay members and lay staff on proper legal procedure.

Q. I understand that Mr. Oliver Hill is the chairman of the Legal Committee for Virginia; is that correct?

A. Yes, he is.

Q. And he is compensated, of course, for his services in that connection?

A. I believe Mr. Hill is—I believe Mr. Hill is.

Q. And he is also compensated for representing the plaintiffs in individual cases?

A. You mean his own individual law practice?

Q. No, but those cases that have the blessing of the NAACP.

A. Well, if he is employed in such cases, he is employed by the Virginia Conference of Branches, not by us.

Q. And would be paid directly by which?

A. If he is paid, he is not paid by us.

[fol. 328] Q. But you don't know whether he is paid or not?

A. By them?

Q. Yes.

A. I do not know.

Q. Then, your answer would be the same as to Mr. Robinson?

Judge Soper: You are acting on the reasonable assumption that he guesses he does not work without getting something for it.



A. I only mention, Judge, I never saw any money pass or any letters of agreement and I assume he is paid by the State Branches.

Mr. Mays: I will not pursue that, Your Honor, because I think we will find somebody yet who knows it.

Judge Soper: The man is in court if you want to get it.

Mr. Mays: Well, it is not our turn yet.

Q. Now, what is your connection, if any, with the Legal Defense Fund?

A. The separate corporation?

Q. Yes.

A. I have no connection with it.

Q. Have you ever had?

A. I have had a connection as assistant secretary.

Q. Over what period of time?

A. I am sorry, I can't give you exact figures; four, five, or six years.

Q. When did your relationship terminate?

A. Last year or the year before. It was a nominal connection.

Q. Well, you actually functioned, didn't you, as assistant secretary?

A. Oh, yes, but the assistant secretary is a more or less nominal office, not much—

Q. Did you have any connection with the Legal Defense Fund except as assistant secretary?

A. None.

Q. Were you compensated for that?

A. Yes, I was.

Q. Do you remember how much?

[fol. 329] A. Oh, \$3,600, or something like that.

Q. Well, you gave that up with some reluctance, didn't you?

A. Well, people don't give up \$3,600 these days enthusiastically.

Q. What was the occasion for your giving up that particular employment?

A. One of the reasons for giving it up was the fact that I had then become the executive secretary of the NAACP and my duties there were much heavier than they had been

before and I felt that I could not give any time, no matter how nominal or how routine, to another activity, and that the executive secretaryship of the NAACP would demand my full time and such talents as I have.

Q. How long was the overlap timewise in those two functions?

A. Oh, eight, nine, or ten months maybe. There was a period of adjustment after Mr. Walter White's death there.

Q. Did you resign as assistant secretary of the Legal Defense Fund voluntarily on your part, or was it suggested by somebody else?

A. Well, I am afraid this was sort of a cooperative effort. I felt very strongly about it because I had the duties on me and I felt I should resign, and the others felt that if I felt that way, that maybe I should resign.

Q. Was there any reason for your doing this besides the matter of the onus of your duties with the Association itself?

A. Yes, there was another reason—

Q. What was that?

A. And this was not a matter of sudden—it was deemed advisable, both from an administrative standpoint, which I have outlined—the overlapping of duties and the drain on the staff members—that the two staffs be separate. We have pursued that as a policy, separating the staffs.

Q. When was that policy adopted?

A. Oh, that was a policy agreed upon many years ago, that was carried out slowly.

Q. Can you state to the Court what was the largest single contribution made to your association during the last two years?

[fol. 330] A. When you say "the Association," do you mean the New York Corporation of the National Association for the Advancement of Colored People?

Q. Yes.

A. Well, sir, I can't recall the amount of the largest gifts of that corporation, I am sorry. I could look it up for you. It wasn't a huge amount, I am sure. You mean the largest individual contribution?

Q. Yes, in the last two years. What about Virginia? Do you remember that?

A. The largest contribution from Virginia?

Q. Yes.

A. Oh, we have received no substantial individual contributions from Virginia, and by "substantial," I mean not even, as I recall, as much as \$100 individually.

Q. In a given year?

A. From an individual in a given year. No, I don't believe it has amounted to that. And here again I will be glad to look it up. For the whole Association in the last two years, you want to know what is the largest contribution; is that right?

Q. Yes. I am not seeking the individual name of the donor, but I would like to know that.

A. I will be glad to give it to you, sir.

Q. When did your corporation register for the State Corporation Commission in Virginia? Do you recall?

A. I think it was in 1955.

Q. Can you come any closer than that?

A. I am sorry, I cannot. The registration procedure was handled by our lawyers and I cannot recall the exact date.

Q. Handled by your local lawyers?

A. No, sir, handled by our New York lawyers. We were registering a Virginia corporation in Virginia.

Q. Had you had any reason for not registering in Virginia prior to that time?

A. No, we had not.

Q. Why did you do it at that particular time?

A. Well, Your Honor, since the Supreme Court decision of 1954, a number of the states affected by this ruling have suddenly called to our attention provisions of certain of their statutes which hitherto had never been applied to [fol. 331] our organization but which now suddenly loomed to be of great importance, and among these was a statute requiring the registration of corporations. Others, which may not interest this Court, were franchise taxes, and so forth and so on. And the pressures after 1954 on this Association, which was regarded as the leading proponent of the desegregation cause, caused us to seek to register to comply with the law, not that we had willfully and deliberately ignored the law theretofore, but no states had called this to our attention, and maybe in some states we

had been operating for as long as forty years and no mention had been made by any official of that state or any administration of that state of the necessity, or the fact that we were not complying. So we decided, sir, to try to comply with the laws so that we would to some degree free ourselves from the harassment and the attempted implication in the public Press and elsewhere, and statements that we were not conforming to state law and that we were proceeding illegally, and so forth, and for that reason, and that is the only reason--you say why did we do it at that date? We would have done it thirty years ago if it had been indicated any way to us the fact that, "You are not registered as a corporation," or any act of ours in the thirty years had so stirred the State of Virginia to say that, "You are violating the law by not being registered." So, in order to conform to the law, we registered.

Q. Now, what, if any, communication did you get from the Virginia Corporation Commission calling on you to register? Any?

A. I am sorry, here again the lawyers handed this. I do not recall whether there was a communication calling on us to register or not.

Q. Well, in any event, your narration fixes the time a little nearer. Wasn't your registration before the Corporation Commission a short time before the bringing of this suit?

A. I said I thought it was in 1956. I may be mistaken; it may have been 1957. But we are proceeding to register in various states and I am not certain where Virginia comes in that list.

{fol. 332} Q. I refer on that to some litigation in Texas, in which you testified some months back. I have a photostat of an exhibit that was marked S-22. This is a confidential memorandum and deals with the activities of a meeting held at 1:30 p. m., August 14 (it does not state the year) for the purpose of formalizing Texas State NAACP program for the immediate future. I ask you whether or not you are familiar with that confidential memorandum?

A. A confidential memorandum for whom from whom?

Q. It is the minutes of a meeting held on August 14. I

ask you whether you have any familiarity with that memorandum.

Mr. Hill: May it please the Court, I think the witness at least ought to be advised, a meeting of what and whom.

Mr. Mays: Well, it is a NAACP meeting.

Judge Soper: It is rather vague, Mr. Mays.

By Mr. Mays:

Q: It was held at the office of Mr. W. J. Durham, attended by Mr. Durham, A. Macio Smith, Dr. E. E. Ward, U. Simpson Tate, and Donald Jones. Have you any knowledge of such a meeting?

A: I have no idea what year it was.

Q: No, they don't give the year. Do you know of any meeting at all dealing with one J. H. Morton, who was seeking admission to the University of Texas?

A: I have no knowledge of that, sir.

Mr. Marshall: Your Honor.

Judge Soper: I guess he is through.

Mr. Mays: I have explored his lack of knowledge. I am through.

Judge Soper: If this is a good point to stop, Gentlemen, and is convenient, we will take a recess.

(Thereupon, a recess was taken until 2:15 p. m.)

[Vol. 333]

#### AFTERNOON SESSION

Met pursuant to noon recess at 2:15 p. m.

ROY WILKINS, the witness on the stand at the noon recess resumed the stand and testified further as follows:

Cross examination (Continuing).

By Mr. Mays:

Q: Mr. Wilkins, with reference to the membership list about which you testified, do you carry that on sheets of paper in the form of Addressograph cards, or how is that handled?

A. We don't carry them on Addressograph cards, they are on sheets for such time as we have them.

Q. Don't you keep those sheets reasonably current?

A. Yes, within a year, I think. We don't attempt to keep them for very great back reference.

Q. You understood, didn't you, that you report only once a year to the Commission?

A. That is the provision of the law.

Q. Would it work any unusual hardship on you to attach a copy of the list that you have any way in your report to the Commission?

A. We would have to prepare such a copy because the lists that we work with are not prepared by us.

Q. Are they prepared by some kind of transfer agent, or who does it?

A. The lists are sent in by the branches. That ends their connection with the business.

Q. Could you not send copies of those, either typewritten copies or photostats of those lists as they come to the Commission where they would then be broken down geographically by the states? Could that be done reasonably easily?

A. I did not say that it could not be done. It could be. I said I estimated that it would place a burden upon us, and I am speaking here only of mechanical personnel burden, to furnish this information to the State of Virginia at any periodic time, or any other state. I did not deal [fol. 334] in the question, which dealt only with burden, of the other reason why this would be a great hardship upon us to furnish these names.

Q. I am talking about the mechanical difficulty now. That is not a major problem, is it?

A. Well, it is a problem, I would estimate, of some considerable proportion. Whether it could be classified as major or not, but it would add to personnel costs and it would add to payroll, and it might conceivably add and require additional office machinery.

Q. Do you have a photostating machine in your office?

A. We have a machine which could do limited reproduction. I don't believe it is adequate or would be adequate to do the reproduction of 13,595 names.



Q. Well, they come on separate sheets. Can the photostat machine do any one of those sheets?

A. Oh, certainly.

Q. It can do any one of those, can it not?

A. Oh, certainly.

Q. They can be put together and sent to the Commission, can't they?

A. I didn't deny that they could do it, I merely said that they would impose an additional burden on the office and its equipment and personnel.

Q. You testified that you were assistant secretary of the Fund. Do you remember when you became assistant secretary of the Fund?

A. No, I honestly do not. I can't remember that.

Q. As far back as 1950, would you say?

A. I am sure I don't know. I do not recollect.

Q. Did you have any connection with the Fund before that?

A. No official connection.

Q. You were familiar with many of its affairs in that earlier period, were you not?

A. Oh, yes, I knew about it and that it was there.

Q. Did you have anything to do at all with the Fund campaign called the Sweatt—S-w-e-a-t-t Victory Fund Campaign?

A. Not I.

[fol. 335] Q. You know nothing about that at all?

A. I didn't say I didn't know anything about it. You asked me did I have anything to do with it.

Q. Yes.

A. No, I had nothing to do with it.

Q. Did you have any particular knowledge of what was going on in connection with raising the funds?

A. I understood that in the State of Texas some citizens there were raising a fund known as the—what is it? Sweatt?

Q. Sweatt Victory Fund.

A. —Sweatt Victory Fund. I had no connection with it and our office had no connection with it, made no contribution toward it, issued no literature in behalf of it, and made no solicitation in behalf of it.

Q. Do you know of anyone in your Fund office who had any connection with that solicitation?

A. No, I do not. It was my impression that it was a completely Texas operation.

Q. You know nothing of any contract entered into with the Association or Conference of the Association with Sweatt?

A. No, I know of no contract entered into by Mr. Sweatt with our corporation. (sic)

Q. Do you know about any entered into between him and the State Conference of Texas?

A. I do not know of any contract.

Mr. Mays: No further questions.

By Mr. Gravatt:

Q. Mr. Wilkins, I would like to ask you one or two questions and I will try and be as brief as I can. Do you have any way that you can tell us, not who the members are, but where the members are, in the state? In other words, you said you had 13,000 and some members at the present time; or something to that effect. Could you tell us where in the state by your chapters or branches those memberships are located?

[fol. 336] A. Well, sir, according to this tabulation we have members in some 73 localities in the State of Virginia.

Q. Could you file that memorandum with your testimony as an exhibit? I take it it is nothing except the name of a branch and the number of members?

A. This has the name of the branch and the number of members as I detailed them this morning in the eight-month period of the various years. In our answer to this suit, Your Honor, I believe we were reluctant to give the names of the members.

Q. I do not want the names.

A. It seems to me that we did not refuse the names of the chapters.

Q. I do not want the names at all, if there is any question about it. The reason why I ask for it is because you are alleging economic reprisals and harassment of your memberships, and I think it would be relevant to that inquiry to

know in what place you may have evidence of that and where your memberships are and the number, and so forth.

By Judge Soper:

Q. Can you start by giving the chapter location?

A. Yes.

Mr. Gravatt: I think he has a record there. If it shows the information which I would like to be filed—

Judge Soper: I should like to know where the chapter locations are, if you know.

A. (Continuing) Chapter locations are listed here, Judge Soper, such as Albemarle County, Alexandria, Amelia County, Amherst, and so forth, on down through Fauquier County, Floyd County, Franklin County, Fredericksburg, Gloucester County, Halifax County, Lynchburg, Madison County, Nottoway County, Pittsylvania County, Richmond, Richmond County, Roanoke, Salem, Southampton County, South Norfolk, Spottsylvania County, Westmoreland County, West Point, and so forth.

[fol. 337]

By Judge Soper:

Q. Is it fair to say that the greater number of contributors reside in one or the other of those counties?

A. Well, Judge Soper, the membership set forth opposite each of the names will indicate the concentration of membership there.

Judge Soper: Is that what you want?

Mr. Gravatt: Yes, sir, that is what I would like to have.

Judge Soper: Is there any objection to that?

Mr. Hill: No, sir.

Judge Soper: Do you want him to file it?

Mr. Gravatt: Yes, sir, please, sir.

Judge Soper: All right, sir. File it.

(The document was received in evidence as Defendant's Exhibit 1.)

By Mr. Gravatt:

Q. Your testimony in regard to the income indicates that during the first eight months of 1957, you have had an average income of approximately \$4,600 a month.

A. Well, the testimony was that the amount was \$37,470.60.

Q. For eight months?

A. For eight months.

Q. And that would be about \$4,600 a month, would it not?

A. Well, it would by simple division.

Q. An average of that?

A. Yes. It wouldn't come in that way, no, that is what I was trying to say.

Q. All right. And your testimony further was that for the year previous you had for twelve months an income of approximately \$49,900, which I believe is an average income of about \$4,200. That does not indicate to me a decrease in income. Does it indicate to you a decrease in income?

A. Indeed it does. Of course, you could do a lot of things, with figures, and you have taken a flat average here against a flat average and the assumption, using your [fol. 338] formula, would be that the average for the first eight months of 1957 would be maintained in the last four months. And I submit that we can make no such assumption. In fact, I know as a matter of fact that we cannot make that assumption because the bulk of the money from branches is received, except in a very few cases, prior to September 1. The bulk of the income from branches. So that I would say, for example, that if you will note that the percentage of—I'm sorry—my formula would be a little different from yours and you are asking me why it would be less.

Q. That is right.

A. The increase in 1956 is something like 12½ percent and if we assume that the income for the last four months is about 12½ percent of the year's total for 1956—if you assume that the income for the last four months of 1957 would be at the rate of increase for 1956, namely 12½ percent, you will come up with a figure of \$41,000, as against \$49,000, if you project this on a percentage basis, which is a little better, at least in my opinion, than the flat average basis.

Q. Would you file with your testimony a statement showing the income for the first eight months of 1957 by the month and a statement showing the income for the year 1956 by the month?

A. I would be glad to do that.

Q. With whatever explanation you have, I believe.

Now, I understood you to testify that the State Conference in Virginia has guaranteed 20 cents for each membership, 10 cents from the local membership fee and 10 cents from the National Association; is that correct?

A. Well, that is the general formula, but I think I explained that in Virginia—

Q. I know you did.

A. —it was a little different.

Q. That is the question I wanted to ask. You said that in Virginia that there was an additional assessment, or something, made by which the Virginia State Conference got more money than that. Could you tell us how much money the Virginia State Conference gets each year?

[fol. 339] A. No, I'm sorry, I can't tell you how much money the Virginia State Conference gets each year. I was dealing only with the formula. This formula is arrived at by consent. The branches in the state say, "We will tax ourselves 10 cents and pay it to our State Conference for its support," and we say in the New York office, "If you vote to do this, we will add 10 cents to yours." Now, in Virginia they state cooperatively, "We will pay more than 10 cents as our share," and I think they pay 20 cents. I think they pay 20 cents and we add a dime, which makes 30 cents from the membership going into the treasury of the Virginia State Conference. It is on a voluntary basis.

By Judge Soper:

Q. That is in addition to the one dollar?

A. Yes, indeed. You mean for the branch?

Q. I understood the dues were \$2. of which the Virginia Conference got one, and this 10 cents is in addition to that?

A. No, the Conference, Judge Soper, does not get the dollar; the local Branch gets the dollar, and then it is that it gives the dime.

By Mr. Gravatt:

Q. Does this money that goes to the Virginia State Conference pass through the national headquarters' office?

A. It does.

Q. And it goes through the office over which you have supervision?

A. It does.

Q. Do you have the records of, let us say, the last three years of the amount of money that has been paid in that way to the Virginia State Conference of Branches?

A. I can secure those figures for you.

Q. Will you file them, please, if I may ask? You will do that?

A. Oh, yes, I will be delighted to do so.

Q. What becomes of the money that is left in the local branch? Is that money expended purely upon the responsibility of the local branch itself?

[fol. 340] A. Yes. You mean their share--

Q. Their 90 cents part of it that remains with them.

A. Yes. That 90 cents is 80 cents in the case of Virginia.

Q. They may dispose of that as they choose?

A. Only within the framework of the policies of the Association.

Q. What control does the National Association of the expenditure of funds, either by the State Conference of Branches or by the local branches for legal expenses and attorneys' fees?

A. Well, sir, we do not have any actual control in the sense that we are able to say, "You can do this and you cannot do that." Branches sometimes and State Conferences sometimes—you ask about legal—sometimes enter into agreements on a legal case with respect to the expenditure of funds, the payment of a fee, which if we had known about it in advance we might have suggested was excessive or unwise, or something of the sort, but once they enter into those agreements we cannot control them.

Q. You do not have any previous power of approval of the expenditure?

A. Well, I want to be accurate on this. We attempt to consult. We have set up machinery suggesting strongly



consultation on these matters so there will be some harmony between the New York corporation and the various branches. Most of the time the branches have consulted us; sometimes they don't, and in such cases they are committed to their obligations and there isn't anything we can do about it.

Q. Does your National Association, in addition to the money that may be contributed by the State Conference of Branches and the local branches to sustain litigation and attorneys' fees, also contribute money to that source in Virginia?

A. On occasion, I believe, we have. I am not certain, but as I think I testified this morning, we do offer assistance in certain cases and under certain circumstances in addition to what the local branch might offer, depending--

Q. Can you tell us what expenditures the National Association has made in Virginia paying attorneys' fees and [fol. 341] costs of litigation, by case, within the last two and a half years?

A. I don't think we have any in the last two and a half years. I think the Virginia State Conference of Branches has borne the costs of litigation of the type you mention. I don't think we have.

Q. Has the National Association made any contribution to any litigation in Prince Edward County within the last three years?

A. I do not recall any contribution in Prince Edward County. It is my impression that the expenses were taken care of by the Virginia State Conference of Branches.

Q. Has the National Association made any contribution to legal expenses or attorneys' fees in Newport News within the last three years?

A. I do not know of any, sir.

Q. Or Norfolk?

A. Or Norfolk, I do not know of any.

Q. In Arlington?

A. Arlington, no, I do not know of any.

Q. What about (sic) Charlottesville?

A. Well, the same would go for Charlottesville. It is my impression that in the last two or three-years period you are asking information about, that the attorneys' fees and

costs in these Virginia actions have been borne by the Virginia branches, working through the Virginia State Conference of Branches.

Q. Well, if there is a membership in Virginia of approximately 13,000 and you pay about 20 cents on one dollar for each of those memberships, which would be about \$2,500, I believe, is that all the money that you know of that the Virginia State Conference of Branches has had available to finance this litigation?

A. Oh, no. They have other sources of income, just as the national corporation has other sources of income aside from membership money or per capita tax money.

Q. What other sources of income does the Virginia State Conference of Branches have?

A. Now, any State Conference of Branches is free to meet and devise ways of raising funds to carry on its operations, just as they devised this per-capita tax. That is a general method.

[fol. 342] By Judge Hutcheson:

Q. Is that income in addition to the 400-odd thousand dollars you referred to this morning?

A. The income of the Virginia State Conference of Branches?

Q. You made some reference this morning, if I remember correctly, to some \$460,000.

A. That was quoted to me from the Texa. testimony.

By Mr. Gravatt:

Q. And that was in 1954?

A. Yes, roughly—income to the New York corporation only, that income which was raised and remained in the treasuries of the constituent affiliated bodies.

By Judge Hutcheson:

Q. You made reference to other sources of income besides the membership dues. Did this amount that you made reference to include additional income, that is, in addition to the membership dues?

A. It included, sir, in the case of a State Conference, a tax which might be voted on a branch in addition to this 3900 per capita tax which would come in through the 10-center. The Virginia State Conference would get together in convention and say, "We have a budget of so many dollars, we have only so much coming in from the last per capita tax. How shall we meet it?" And they may have to pay a tax of 10, 15, 20, or 30 dollars per year.

Q. That would be no part of the income of the National Association?

A. Exactly so.

Judge Hutcheson: I see.

By Mr. Gravatt:

Q. And that would be an additional source of income that the State Branches would have?

A. An additional state per capita tax, but it would come from the same membership.

Q. Does the Virginia State Conference of Branches itself carry on solicitation of funds?

A. I am sure they do, because the Conference is simply [fol. 343] a cooperation of the branches and the branches carry on solicitation of funds for cases in which they are interested, and if the State Conference of Virginia should deem a local action to be of statewide importance, or impact, or significance, even though it would be located in Prince Edward County, it would seem reasonable that they would solicit funds to carry on this litigation from elsewhere in Virginia than Prince Edward County.

Q. One other question. What is your last recollection of the National Association's expending money within the Commonwealth of Virginia in support of litigation, either as costs or attorneys' fees?

A. Well, sir, I have no recollection of any. I have no recollection of it. I do not handle those disbursements, I do not handle the legal matters in Virginia or elsewhere, but my recollection of general policy is, and of procedure in the last two or three years, which is the period—

Q. That is what I originally asked you.

A. Yes—that these matters have been taken care of by

the Virginia State Conference of Branches. But that does not preclude, and I think my testimony this morning with Judge Soper, I specifically stated that the National Association, that is, the New York headquarters, does offer on occasion funds and legal fees. Now, whether they do it in Virginia or not, my strong recollection is that the Virginia Conference, which we regard as one of our strongest and best organizations, looks after these expenses themselves.

Q. Who is the legal officer who has firsthand information on that subject?

A. Well, Mr. Carter is our general counsel here, and between Mr. Carter and our Legal Committee and our chief accountant, they would know the actual details.

Q. Who is your chief counsel?

A. Mr. Robert Carter is our general counsel.

Q. And Mr. Carter has been in litigation in Virginia during this period of time, has he not?

A. I believe he has—I am sure he has.

Q. And he was not paid by your National Association, he was paid by the local State Conference of Branches?

A. He was not paid at all by them. Mr. Carter is a member of our staff and he is employed the year around. He was not paid to conduct the Virginia case or the New Mexico case, but to handle legal affairs for the National Association.

Q. And in that connection and as part of his duties as general counsel, his representation of these various Virginia plaintiffs falls within his duties in that respect as your general counsel?

A. It does. In my testimony this morning, I said we offer legal advice and assistance and counsel, and Mr. Carter is one of the commodities, if I may be so crude as to use that word with respect to his high talents, is one of the commodities we offer.

Q. What other talent do you have that you offer in that way?

A. Mr. Carter is the only attorney on our paid staff of the National Association.

Q. Then, you have no other that you offer on an annual salary basis?

A. Not that the New York corporation offers on an annual salary basis.

Q. That is what I mean. And his representation in this case of these respective individual plaintiffs has been a part of his duties as your general counsel and he has been compensated in that way?

A. It has; that is right.

Q. And his employment and authority to represent these people came from the National Association and not from the local branches or from the various plaintiffs individually?

A. Oh, no. No, I'm sorry, I don't believe I could go along with that. His employment, or activity, or services in certain cases grew out of the requests either of the plaintiffs individually or the branches in the locality which had jurisdiction over the case or knew about the case or asked the national office for assistance on the case. As a result of their request, Mr. Carter's services were offered. Now, it was not an independent commercial transaction. That is all I am trying to say. In the first instance, it was through a local contact and the local branch, their local counsel Virginia State Conference counsel, was the only way Mr. [fol. 345] Carter could be brought into a case.

Q. You mentioned in your testimony there was a conflict between what Mr. Carter's clients in such litigation wanted done and what the National Association wanted done. What would be his position in the event of a conflict as to what should be done in a piece of litigation that he was handling in that relationship?

Judge Soper: Is it your idea to ascertain whether there has been a conflict? Haven't we got enough in this case to go into with it going into a hypothesis? If there was a conflict, let's ask him.

Mr. Gravatt: Judge, I think there were conflicts in some cases.

Judge Soper: There may be. Let's ask him. Why ask him a question unless it is a real question.

By Mr. Gravatt:

Q. Do you know whether there have been any conflicts arisen where the litigant's policy and the policy of the

National Association of Colored People through Mr. Carter?

A. I do not know of such conflicts.

Mr. Gravatt: I think that is all, sir.

Judge Soper: Any redirect?

Mr. Carter: No.

Judge Soper: Call another witness. These witnesses, I assume, may stay in the courtroom after they have testified?

Mr. Carter: We talked with Mr. Mays and Mr. Gravatt about it and except for Mr. Wilkins, who is representing the Corporation, and Mr. Banks may be called on redirect, but I understand that other than that, the rest of the witnesses will be free.

Judge Soper: All right.

Mr. Mays: I am not sure, if Your Honors please, what is meant by the witnesses' being free. I think it was understood that so far as counsel were concerned we would be glad for the Court to excuse them after their testimony. As to Mr. Banks we would like for him to be excluded and [fol. 346] for Mr. Wilkins, we will be happy for him to stay representing the Corporation.

Mr. Carter: If Your Honors please, we haven't discussed this with counsel for the defendant. We find that we have reached the point where we had not anticipated and that was that Mr. Hill's testimony would be required. We think that we should call him and it is only fair—of course, we realize the defendant can call him, but we think it is only fair that he should be called by us. We wanted some guidance in terms of what the Court would have us do. We would be at a disadvantage—

Judge Soper: Do you want certain information from Mr. Hill? Would you like him to testify as to this this (sic) information? He seems to have a position of some importance in this legal setup.

Mr. Mays: We will determine that as the trial progresses, Your Honor. I might say that if they wish to put him on they can do it with the same conditions as in the case of Mr. Marshall. We would not ask him to retire from the case, we would be happy for him to stay in.



Judge Soper: You can use your own judgment. You may call him now or wait until they call him.

Mr. Carter: We would prefer, I think, to call him ourselves.

Judge Soper: All right.

OLIVER W. HILL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter: .

Q. Mr. Hill, what position, if any, do you hold with respect to the Virginia Conference?

A. I am chairman of the Legal Committee, Legal Staff as it has been referred to.

By Judge Soper:

Q. Of what?

A. Of the Virginia State Conference of NAACP branches.

[fol. 347] By Mr. Carter:

Q. Are you paid any compensation for that job?

A. No, I am not.

Q. You heard Mr. Banks testimony that a person would come into his office and if he determined there was a question of racial discrimination and the possibility of immediate legal action, he would refer the case to the chairman, or to you, or some other member of the Committee. From that point on, would you explain how it operates, because I think that point of the matter is not clear.

A. People who come to me in my capacity as Chairman of the Legal Committee, either of their own volition or directly from some local branch, or after having been directed there by Mr. Banks; assuming they come from Mr. Banks, I would talk with them. If their problem is a matter that affects Negroes generally, which is the usual criteria for determining whether or not the State Confer-

ence is going to become involved in the situation and there is evidence of racial discrimination, we will advise the people that I will recommend to the Conference that they accept the case.

As to what would happen then would depend somewhat on the person's wishes. There have been instances where people have come from other parts of the State and I have endeavored to refer them to the attorney nearest them in that particular part of the State. If for some reason they may not want that particular attorney to handle the case—it just so happens, as a matter of development in this State, Your Honors, Hill, Martin and Robinson have attracted quite a bit of attention as being lawyers handling civil rights matters and a lot of people feel that we are their preference. Consequently, we do handle the majority of the case. (sic) But in recent years we have endeavored to get them to utilize the services of lawyers in various sections of the State where we have attorneys.

By Judge Soper:

Q. Who are the members of that firm, Mr. Hill?

A. Well, we are not a firm any longer, but we were for a number of years.

[fol. 348] Q. Give the individual's full names.

A. Oliver W. Hill, Martin A. Martin, and Spotswood W. Robinson, III.

Q. Where were they located?

A. In Richmond, Virginia.

Q. And they are still located individually?

A. Well, Mr. Robinson is by himself. Martin and I are still together.

Q. But in Richmond?

A. In Richmond, Virginia, yes, sir.

Judge Soper: All right.

A. (Continuing) It would also depend on what the situation was involved. Most of these instances, such as has been indicated, involve the situation where you have a lot of difficulty about bus transportation, people who get on the bus and refused to move and they would be arrested. We would get a call about it. We talked to the people.

Now, if it was a lawyer in that particular area, we would usually refer the matter to the attorney in that area. If it was around here, we would frequently—one of us would frequently handle the situation.

By Mr. Carter:

Q. By a lawyer in that area, Mr. Hill, do you mean the lawyers you referred to?

A. The members of the legal staff of the Virginia State Conference, that's right.

By Judge Soper:

Q. Before you leave that, let us assume, Mr. Hill, that you have reached the conclusion that the complaint is one within the general scope of the Association's work. Then how do you designate the lawyer to take care of that? Or rather before you get to that, is your decision final or do we have to refer that to somebody else?

A. I never had to refer to anyone else. We have always acted on a more or less cooperative basis. I think I may be the oldest member of the group—

Q. Is there a chain of the Conference?

[fol. 349] A. I would make a recommendation to the president that we accept this particular case.

Q. What I am saying is, do you have to make a recommendation and get the assent of the Chairman of the Conference?

A. Of the President of the Conference, yes, sir. We have to concur.

Q. So that your decision is not final?

A. No, sir.

Q. Now then, we will assume that you reported to the president and he is (yes) okayed the case. Now then, what steps are taken for the employment of the lawyer and by whom?

A. Well, that would depend on the situation, where it was located, and a number of factors.

Q. You have told us about what would happen ordinarily

in a bus case. You would find a lawyer that was in that neighborhood and was on your staff.

A. That's right.

Q. And you would select him?

A. Generally, yes, sir, I would call him up and ask him to handle the case.

Q. And I gather from what you say that the client, and getting a lawyer free of charge, falls in with your suggestion?

A. I never had one to complain yet, Judge Soper.

Q. Who is it that makes this selection of the lawyer? Do you do it?

A. Well, in those situations I would make the selection, yes, sir.

Q. Then the work is done and the activity's through.

A. That's right.

Q. Who fixes the fee?

A. The lawyer would submit a bill for his services. Now we operate on a basis of a per diem. Assuming that he had a case, and usually, quite frequently in these criminal cases they get continued two or three times, and so forth. He may submit a bill for part of a day, for two or three days when he had to make an appearance in court, and that totaled up to a certain amount of money. If he had to go to some other place from his home residence, he would have mileage. We [fol. 350] allow mileage at the rate of eight cents a mileage. He would have his mileage. He would submit the bill to me; I would examine it. If it appeared to be Okay, I would approve it and send it to the President of the State Conference. On the basis of my approval and his approval, it would then be sent to the Treasurer and a check would be drawn and the man would be paid.

Mr. Carter: You have asked the questions that I was going to ask.

By Judge Hoffman:

Q. Do you ever, Mr. Hill, have occasion to have people come to you that either through reference or by reason of the establishment of what reputation you may have developed in certain fields, and who definitely did not have a

matter involving constitutional rights or civil rights, but let us say someone has an injury by reason of an automobile accident, what do you do with that type of individual?

A. Well, we advise them that this is not a matter that the NAACP handle and that they will have to get themselves an attorney of their own choosing on a private basis. In some instances, I have been retained. Plenty number of instances, they have gone to other counsel. We frequently get—we don't get many of that type of situation, but (sic) what we do get constantly is a large number of people who come and say that they have exhausted their private means and now they are coming to us for help. We frequently determine that isn't a matter that involves anything that the NAACP can expend funds for. But in a number of instances we have gone on and (sic) individual basis and tried to help them. We get a lot of situations where people come in and claim they don't have any money for an attorney, but it is still a matter that just affects them as an individual. It might affect anybody. We don't feel race had anything to do with it. We handle a lot of those things just on a personal basis. But so far as the type of situations you have asked me about, we advise them that they have to get a private attorney to handle the matter, and they do.

[fol. 351] Cross examination.

—By Mr. Mays:

Q. Mr. Hill, let's take the specific case in the Prince Edward County which went up to the Supreme Court of the United States. Will you state in your own fashion just how the arrangement was entered into between the plaintiffs and the attorneys in that case?

A. Well, I can give you the whole story of the case.

Q. That is what I want.

A. On a Monday afternoon, I got a telephone call that some students in Farmville stated that they had gone out a (sic) strike and they wanted me to come down there immediately. We were in the midst of a conference on a case that had gone to the Court of Appeals involving the situation at Pulaski County. We had to go back to Pulaski on

that day. I told them I couldn't come down there. Over the phone, I suggested that they go on to school. But I said, "If you are not going back to school, write me a letter and I will let you know when I can get down there."

I got a letter from them the next day. We got in touch with them, told them we would be in Farmville that Wednesday on our way to Pulaski.

Q. Who is that letter from?

A. Some of the students. Riding down to Farmville, Mr. Robinson, Dean Hensley, of Virginia Union, and a man named Mr. Carpenter, were going up to Pulaski. We were talking about these children being out on strike and we were fully of the opinion that we were going to advise them to go on back to school because at that time the Clarendon County case had already been filed.

Well, we got down there and saw these children in the basement of this church. We heard their statement, the manner in which they had conducted themselves, the manner in which they organized the strike, they (sic) way they were conducting themselves at that time, and we didn't have the nerve to break their spirit and morale by refusing them any assistance we could give them. So we told them that— incidentally, they had arranged a meeting for the next night. We told them we wouldn't be able to get back. We told them when we did come back through there if their [fol. 352] parents were behind them on this matter we would meet with them and their parents and if their parents were behind them we would see what we could do about getting the assistance of the State Conference in handling their situation there in Prince Edward.

Mind you, we didn't go into Prince Edward cold. From the time I got out of the service in—well, in the early '46, we had been to Prince Edward County on a number of instances in an effort, at the request of the people of Prince Edward County, to get alleviation of the deplorable school conditions that existed at that time in Prince Edward County. We were unable to get any action on the part of the Prince Edward County officials because they continually complained they didn't have any money to put in the Negro schools, or to put in any schools, so they



claimed. And they didn't do anything about it. The condition continued to deteriorate. So we knew these children were up against a most deplorable situation.

As I say, we went to Pulaski. We came back on the return, met with these children and their parents. We discussed with them the proposition of alleviating the condition in Prince Edward County, and we told them that in our opinion the only way they were ever going to eliminate the discriminatory school conditions would be to strike at the source of the evil, and that was the segregated school, and that if they were interested in doing that, we would see what we could do about it.

Now the people indicated they were interested in doing that; they signed up some authorizations authorizing us to represent them and we took the matter before the State Conference, got the approval of the State Conference to handle the case, and did handle it.

Q. Now you had one meeting with the parents of the children; is that correct?

A. Oh, we had more than one meeting with them.

Q. Well, you came back from Pulaski?

A. As we came back, we met with them and then we went down subsequently on subsequent meetings.

Q. When did you sign them up on your first meeting, when you came back from Pulaski?

[fol. 353] A. I think so, Mr. Mays. I wouldn't want to swear to it, I really don't remember.

Q. You certainly wouldn't say positively it was some other time, would you?

A. I don't know. I could probably look at some of the authorizations and maybe figure it out from the dates. I don't remember right this minute.

Q. Don't you remember whether or not it was at the first meeting with the parents that you got them to sign up?

A. I am sure of this, that certainly if we had authorizations with us—now I don't know whether we had any or not—I am sure we would have got some of them. But I know very definitely that we got definitely from the people that they wanted us to represent them and their children in this matter.

Q. Were these authorizations formed that you sort of carry around or were they made up separately for each case?

A. We will put it this way: We had a form that we would use. We might cut a stencil on a particular case in order that it would include the name of that particular county, but that would be the only change.

Q. These forms that you used down in Prince Edward, were they all one or were there several of them that were distributed for signature?

A. You mean were all on one sheet of paper or a lot signed?

A. (sic) Or of several sheets.

Q. (sic) Oh, no, sir, they were individual sheets of paper because we had the names of the parents and we would also request the names and ages of their children, and that sort of information.

Q. Were the people at the meeting told who their lawyer would be, or did they indicate to you who they wanted?

A. Oh, as a matter of fact, it was taken for granted that we would be the attorneys for them.

Q. How do you know it was taken for granted by them?

A. Well, nothing to the contrary was stated.

[fol. 354] By Judge Soper:

Q. You first heard about it from Prince Edward?

A. I told you, Judge, when the children went out on strike—

Q. The children who sent for you.

A. They called up here and called me.

Judge Soper: Well, you don't want to go over that.

By Judge Hutcheson:

Q. I thought you said you had been there several times prior to that.

A. We had. I had. If I am not mistaken, other attorneys had. But not in the immediate period preceding this. I mean, I have been down there in '46 and '47. Over a period of years, I have been down there a number of times.

Q. In connection with the school?

A. In connection with the schools, yes, sir, but I hadn't been down there immediately preceding the strike.

By Mr. Mays:

Q. Was it represented to the people who were asked to sign that you were trying to get them new schools or that you were taking this case to the Supreme Court on the segregation issue?

A. We made it very clear to the people that we would take the case to the Supreme—not necessarily to the Supreme Court, but take it to court on the basis of elimination of segregation.

Q. Were the names of the lawyers filled in as of the time these petitions were signed or was it left to you to fill the names in, these authorizations, I mean.

A. I don't know. I mean, I just don't remember.

Q. So so far as you are concerned, it is quite possible that you might simply have handed them blank authorizations and you filled in the lawyers names thereafter?

A. It could have been.

Q. Who were the lawyers whose names ultimately were filled into these authorizations?

A. Hill, Martin and Robinson, I am certain.

[fol. 355] Q. As a firm?

A. We were a firm at that time.

Q. And no one else?

A. No one else.

Q. Now you were paid for handling that case, were you not?

A. Yes, I received compensation.

Q. How much?

A. Well, I would have to go back. I mean, I never got it at one time or anything of that sort.

Q. Will you supply that information to the reporter so we will have a record?

A. As to what I received as compensation for the Prince Edward case?

Q. For what your firm received.

A. Yes, sir.

Q. From whom did you receive them?

A. From the Virginia State Conference of Branches. I will have to check my files to see whether or not I got any money from any other source.

Q. You are not quite sure whether you received money from anyone other than the fund or the Association?

A. Well, I mean I know if I got any money I got it from one of two sources.

Q. One of those two sources?

A. I got it either from Virginia State Conference or from the Legal Defense Fund.

Judge Soper: I can't hear you.

A. (Continuing) I say, there was no problem in my mind, I know what moneys I got I got from one of two sources, but whether—

By Judge Soper:

Q. What were the two sources?

A. Either the Virginia State Conference of Branches or the Legal Defense Fund. But I don't know whether I got any from the Defense Fund in that matter or not.

[fol. 356] By Mr. Mays:

Q. But definitely nothing from individuals?

A. Nothing from individuals, no.

Q. Were you in the Charlottesville case?

A. That is correct.

Q. Will you state to us, as briefly as you can, how your representation came about in that particular case?

A. Some of the parents in Charlottesville asked me to come to Charlottesville and to meet with interested parents concerning the school situation and I went up and met with them. We met in the basement of some building. I don't remember whether it was a church or some building. I discussed the situation with them. I had carried authorizations with me because we were going to discuss the school matter. A number of them signed authorizations. There were also some people from Albemarle County who signed

authorizations and subsequently on their behalf I filed a petition with the Charlottesville School Board and knowing—we waited about a number of months and nothing happened, and we filed another petition with the school board and they still indicated they were going to follow the policy of the State Board of Education and continue the status quo. Then we filed suit.

Q. Now, in that instance, did you represent the people that you were going to take the case to court based on segregation, or was it in that case an effort to get better schools?

A. No, there is no question about it, not even in the talk about just better schools, because that was after the Supreme Court decision.

Q. At the time you tendered your authorizations to those people, which was at the first meeting in Charlottesville, I understand that the names of the attorneys were left out and later supplied, were they not, originally?

A. There were blank spaces for the name of the attorney. Some of the people filled in my name and some left them blank.

Q. Did any of them fill the firm name in?

A. No, sir. There was no firm.

Q. Did you tell the people how to fill out the blank spaces?

[fol. 357] A. No. I told them what it was.

Q. No, but I mean, who put the names in as to the lawyers that represented them?

A. I didn't tell them anything especially about the lawyers. I told them that in order to represent them I would have to have a written authorization.

Q. And some of them put your name in and some simply signed in blank?

A. That is correct.

Q. Were those blanks later filled in?

A. That is correct.

Q. Who filled them in?

A. Oh, someone in my office.

Q. And what name did they put in?

A. They put in mine.

Q. That was with your full knowledge, of course?

A. Well, I mean I knew that, yes.

Q. Did you take that up with the individuals that had left the name in blank, and ask them whether that was in accordance with their wishes?

A. At the time, Mr. Mays, it was not possible for me to have done so.

Q. But the answer is no?

A. The answer is no, because I knew all of them.

Q. I mean, you had some filled in and some that were not and your office did not know which ones they had filled in?

A. Yes, we had those.

Q. And you don't know which?

A. Except those that were filled in with typewriter, were filled in in my office.

Q. After you found out that your office had filled in on typewriter your name as counsel on the authorizations and then you realized which particular plaintiffs they were who had not filled your name in themselves, did you communicate with any of them to find out whether they wanted you to be their lawyer?

A. No, because it never occurred to me there was any occasion for it. I was the one that had talked with them.

Q. Well, did you assume because you were the one that went around to talk with them, that you were going to get the business? Is that the normal conclusion?

[fol. 358] A. No, but if you were talking about a case and you didn't say anything about anyone else, I would assume you were expecting me to handle the case.

Q. Well, if it was done in a public meeting in which you left the blanks to be filled in.

A. That was not a public meeting in the sense of a public meeting. This was a meeting of parents who were concerned about the situation there in Charlottesville and, as I say, there were some from Albemarle County, but as long as they were all parents with children in school, who had come there to discuss the situation with the idea that I had been invited there—



Q. Can you approximate the number of people that were there?

A. Oh, I imagine there were about thirty-five or forty people.

Q. And you didn't know them all?

A. Oh, no.

Q. As far as you know, you had not had prior relations with them as attorney and client?

A. Oh, yes, I had had relations with quite a number of them. I knew quite a number of the people. I mean, I didn't know all the names, but I knew a lot of them by sight, and you have got to bear in mind, Mr. Mays, this was not a brand-new, cold-turkey situation. People had been after me to come to Charlottesville for a long time prior to that concerning the schools.

Q. They had not gotten close enough to you to have told you in advance they wanted you as their lawyer?

A. No, because—

Q. Otherwise you would not have left spaces blank.

A. Oh, the space was left blank because what I used was a form of authorization that I had prepared and left the space blank so that I could give it to some other attorneys if they needed some authorizations, or something of that sort. I mean, this was used for this type of situation, and that is the reason the space was blank. It was not the regular printed form of contingent fee contract that you have in your office with your name printed on it.

Q. But it was left blank so the name of the attorney could be filled in?

A. It was left blank so the name could be filled in, yes.

[fol. 359] By Judge Soper:

Q. And, as I understand it, they had the opportunity to fill in the name if they wanted to?

A. That is correct.

Q. If they did not fill it in, you took for granted that it was up to you to take the employment?

A. I just took it for granted they expected my name to be filled in.

Judge Soper. All right. That is sufficiently answered.

By Mr. Mays:

Q. I think you mentioned the Clarendon case. Will you state how that relationship grew up between attorney and client, if you know?

A. I did not participate in the Clarendon County case.

Q. All right. I won't pursue it further. How about the Newport News case?

A. I participated in the Newport News case.

Q. Will you tell us about the Newport News case?

A. Well, the clients in Newport News contacted the lawyer there, W. Hale Thompson, who associated Philip Walker, who is also in Newport News, and at their request Mr. Robinson and I associated in the case with them.

Q. Were you there at the time they signed up?

A. No, I was not.

Q. You don't know anything about how that was signed up?

A. Not of my personal knowledge; I know what Mr. Thompson said.

Q. Were there any other cases brought in Virginia besides those mentioned? Was there one brought in Norfolk?

A. That is correct.

Q. Were you counsel in that case?

A. That is right.

Q. How did that relationship between attorney and client develop?

A. Mr. Ashe met with parents who had invited him to [fol. 360] meet with them, so I am advised, and at his request we entered the case.

Q. Were you there when the parents signed up in that case?

A. No.

Q. What attorneys were involved in the Norfolk case? Yourself, Mr. Ashe, and who else?

A. Hugo Madison and Mr. Robinson.

Q. Were there any others besides the three mentioned a while ago in the Newport News case?

A. There were four in the Newport News case.

Q. Mr. Robinson—

A. Yes, sir, and Philip Walker.

Q. Were there any other cases brought in Virginia which involved school segregation proper?

A. Yes; there was one in Arlington.

Q. Tell us how that relationship came about between attorney and client.

A. Well, Mr. Brown was the attorney that the parents contacted.

Q. What is his full name?

A. Edwin C. Brown. And at his request we entered the case.

Q. Were you there at the time the authorizations were signed?

A. No.

Q. You don't know whether they were filled in or not?

A. No.

Q. Do you remember the compensation that you received in each of these cases? I asked you about Prince Edward. What about the others? Do you recall?

A. Well, to date I have not received any compensation on it—Norfolk, Newport News, and Charlottesville, and maybe \$150 from Arlington, is all the compensation I have received.

Q. What about the other lawyers? Does the same apply to them, as far as you know?

A. No; Mr. Ashe and Mr. Madison have received some money on expenses and, I think, something on account of fee, but I think that would be all.

Q. In these several cases, has anyone paid you any fee [fol. 361] at all, or obligated himself or herself to pay you any fee at all except from the Fund itself?

A. Now, you say "the Fund"; do you mean the Legal Defense Fund?

Q. That is right.

A. The Legal Defense Fund has not obligated itself to pay me anything.

Q. How about the NAACP?

A. The only expectation I have of receiving compensation is from the Virginia State Conference of NAACP Branches and, in the Charlottesville case, some people in Charlottesville.

Q. You say "people in Charlottesville"—

A. I am talking about the plaintiffs in the case.

Q. And they were the plaintiffs?

A. Yes.

Q. They were the people in Charlottesville who wanted to pay you?

A. They said they would pay me if I did not receive compensation from the Virginia State Conference.

Q. That is not true of the other cases, is it?

A. By me?

Q. Yes.

A. Well, I have not had any understanding with the plaintiffs. Now, whether or not the local attorney has reached an understanding with them that would include me, I just haven't found that out, either.

Q. Do you know whether the attorney in any of these other cases has been paid any private compensation by any of the individual plaintiffs or their parents?

A. Let me put it this way: If they have been, it has been on condition that they do not be paid by the Virginia State Conference. In other words, there is no possibility of double compensation.

Q. Do you make any investigation yourself, or do you know of anyone who makes an investigation to find out the capacity to pay of the several plaintiffs?

A. None except we just use a matter of general knowledge and observation. We know that this type of litigation is expensive; we also know that it involves matters that affect Negroes in a large area; and we feel that irrespective [fol. 362] tive of a man's—at least, I feel that irrespective of a man's individual wealth, that he has as much right to get cooperative action in these cases as anyone else.

Q. In other words, I take it from that, Mr. Hill, you feel that people who come in as plaintiffs here should have their expenses and attorneys' fees taken care of by a fund irrespective of their capacity to pay?

A. Well, I would put it, first, on the basis of the individual. I see nothing wrong with the individual, if he is wealthy enough, to fight a public problem at his own individual expense, but I certainly don't see anything wrong with an individual, even though he may have some means

individually, of getting concerted support on a matter that affects the public.

Q. Is it fair to put it this way, then: that if a man has the means and is willing to pay, then you would look to him to pay, but if he had the means and felt it should be done for him, then in that case the Conference or whoever put up the money should put it up for him.

A. I might view it that way if the situation ever developed. I have never had the situation confront me.

Q. Well, have you investigated enough to find out the capacity to pay of these several clients?

A. As I said, in a general way I pretty well know the economic level of most of the people we have represented. Now, there are some you could find, one or two individuals, who are well above the means of the general group, although there has been nobody that I have known of that was in such a situation that it was shocking to my conscience and I could not go ahead and do something for the individual.

Q. Do you remember attending the hearing before the Committee on Courts of Justice of the House of Delegates of the General Assembly of Virginia?

A. You say, do I remember it?

Q. Yes, which was on or about September 10, 1956. Do you remember such a hearing?

A. Which hearing was that? You characterized it. What was it?

Q. It was a hearing before the Courts of Justice Committee of the General Assembly in connection with these bills. Did you not appear before them?

[fol. 363] A. I appeared before a committee on some of these bills. I don't remember exactly which they were now.

Q. Do you remember saying to that committee that the NAACP had no objection to complying with the laws that all similar organizations must comply with?

A. I may have said that.

Q. You don't deny it?

A. No, I don't deny it.

Q. Did you at the same meeting, or committee hearing, state that the NAACP has never engaged in the improper,



illegal, or unethical practices like those that the proposed legislation was aimed at?

A. Well, as I recall, there was quite a little talk and in your bills—

Q. Not my bills.

A. I didn't mean the personal reference—the bills that we have under consideration here. There has always been a lot of talk about instigating and soliciting litigation. Well, we have never gone out and solicited a client or plaintiff in a case, to my knowledge, in Virginia. I mean, I have not done it and, to my knowledge, no one else has done it. That is the type of thing I was talking about. We don't do any ambulance chasing about these things. We take cases as they come. And the situation that I have pointed out quite a number of times here, if we were going to take a test case for the school situation in Virginia, we never would have taken a case like Farmville. If we were going to take something, we would take something in an area where the people, in our opinion, were more enlightened on segregation.

Q. Or at least would not resist so much?

A. Well, I will put it my way—more enlightened—because I think if they are enlightened we will get over the resistance.

Q. If the NAACP, as you said to the Committee never engaged in these practices, do you think it is consistent to come here and contest the statutes?

Judge Soper: I don't understand.

Mr. Mays: My question was this: If the NAACP was not engaged in those practices, which he denied before the [fol. 364] committee, which these acts themselves would prohibit, in his view, what standing does he have to come here and complain about it?

Judge Soper: I don't think that is a proper question. This man is a fact witness. If you want to ask him a question, go ahead. You are trying to get him to express an opinion on the reasonableness of this law.

By Mr. Mays:

Q. Did you at any time say to the members of that committee that you defied them to point out factually anything



that the NAACP was doing or the Fund was doing which was contrary to the provisions of these statutes?

A. I don't recall tying myself down, Mr. Mays, to these statutes, but I did make a statement to the effect—

Judge Soper: Now, aren't we going into a field that is purely argumentative?

By Mr. Mays:

Q. Well, I will ask this: Was there a cross burned at your home in August '55?

A. There was.

Q. Who do you think was responsible for that action?

Judge Soper: I can't understand you, Mr. Mays.

By Mr. Mays:

Q. Who do you think was responsible for that action?

Judge Soper: What action?

Mr. Mays: Burning a cross at his house, Your Honor, in August 1955.

Judge Soper: I say that has got nothing to do with the case.

Mr. Mays: I have no further questions, Your Honor.

Mr. Gravatt: If the Court please, I would like to ask Mr. Hill one or two questions and I will try to be brief.

Q. Mr. Hill, I believe you stated that when you went to Prince Edward, to the meeting there with the parents, the parents wanted better schools. Is that correct?

[fol. 365] A. I think I said, Mr. Gravatt, that we advised the parents that the only way they could alleviate the discriminatory educational conditions that they were complaining of was the elimination of segregation.

Q. Well, I ask you, did the parents at that meeting tell you that what they wanted was better schools?

A. The parents spoke about the school conditions. In full answer to your question, I am certain that in the opinion of some of them the only thing they contemplated as what we will call a new school—just a minute—on the other hand, these people were consulting me, I was advising

them in my capacity as an attorney, and in advising them in my capacity as an attorney I thought I should give them the best legal advice I could under the circumstances that were confronting them, and in my honest opinion the only way to eliminate the unequal educational opportunities in Virginia or anywhere else was to eliminate the segregation, and I so told them.

Q. And, after telling them, you left, and did you tell them that if their parents would support them, you would represent them?

A. You asked me about the meeting when I met the parents?

Q. Yes. I am asking you now about the meeting when you met the children.

A. Oh, the meeting when I met the children. We merely told them, as I recall it, that their parents were behind them in this thing and we would see what we could do about it. I don't remember going into it in great detail at that time, because we were in a rush to get to Pulaski.

Q. Did you offer them any forms for them to sign to show whether their parents were with them or not, as you put it?

A. I don't think so, because there was nobody to leave them with.

Q. Now, you testified about a meeting with the parents and had them sign some kind of form that you had?

A. Yes.

Q. Was that form explained to these people, the meaning of it and what it implied?

A. Yes.

[fol. 366] Q. You did file a suit here asking the Court—or attacking the facilities of Prince Edward as being unequal facilities, did you not?

A. No. We filed a suit to eliminate the discriminatory conditions there.

Q. Didn't you attack the conditions in Prince Edward on both bases that the facilities were not equal and, if they were made equal, they would still be discriminatory because of the State statutes requiring segregation?

Mr. Carter: If the Court please, we have not made any objection, because we want the whole truth to come out here, but this does not seem to be germane to the question

that is raised in this case which Mr. Hill was testifying about, as to how the NAACP is involved in litigation, and so forth, and we object to the question about what the theory of the plaintiff is, and so forth.

Mr. Gravatt: I don't object to withdrawing the question. I am trying to be as factual as I can.

Judge Soper: All right. It is withdrawn.

By Mr. Gravatt:

Q. Did you ever communicate with any of these people personally after you got their names on this paper that you had them sign?

A. Yes.

Q. Have you written from your office to the plaintiffs in this litigation at any time since 1951 a written report upon the litigation?

A. Not in the same sense in which, I imagine, you use the word "report," no.

Q. Have you got any correspondence that you have addressed to all of the plaintiffs in that litigation to give them advice as to what has taken place and to find out their wishes with respect to the next step in the proceeding?

A. No.

Q. You now have a proceeding pending, asking the Court for an order to admit the children of some seventy-five parents to white schools in Prince Edward; is that correct?

A. That was the original suit.

[fol. 367] Q. Have you ever inquired of any of these parents, since the decision of the Supreme Court in 1954, whether they wanted their children to go to a mixed school or not?

A. Now, that is a different question. We have conferred with parents who were plaintiffs in the case since the decision and from time to time during the course of this litigation. You asked me, had I sent them a written report. I answered no, but we have conferred with the parents in Prince Edward County.

Q. How many of them?

A. Oh, we would advise them we were going to be there and as many as would come would attend.

Q. How did you advise them?

A. By sending them a notice of the meeting.

Q. Have you got a record to show you have sent notice to these people of an opportunity to confer with you in Prince Edward County?

A. I am sure we have told them we were coming down and we wanted to meet with them.

Q. I would like for you to file in this suit copies to any of these plaintiffs of a notice giving opportunity to have a conference with you since this suit was filed.

Mr. Carter: If Your Honor please, we don't see the materiality of this.

Judge Soper: It is very far afield. It is not going to do any good or any harm to have it, but if counsel wishes it, I suppose he is entitled to it. The witness has already testified that he conferred with these people from time to time. Now, what particular good it is going to do to show that he wrote them a letter, or to have the record encumbered with copies of letters to these people to come to a meeting, I don't know.

Mr. Gravatt: It is all right with me, sir. I want to be fair with the witness about the matter and I felt it was my obligation to do it.

Judge Soper: That is all right. Go ahead.

By Mr. Gravatt:

Q. Mr. Hill, is the State Conference of Branches contributing, or has it contributed to pay costs of attorneys' [fol. 368] fees of litigation in Newport News, Virginia, within the past year?

A. Yes, it has contributed to costs.

Q. Is it obligated to pay further costs and attorneys' fees there—the State Conference of Branches?

A. It is obligated, yes.

Q. To whom is it obligated to pay costs and attorneys' fees?

A. To Mr. Walker, to Mr. Thompson, and to me.

Q. Will you state how much, to what extent it is obligated? Is it obligated to pay all of the costs of such bills as may be presented, or on a per diem basis, or just to what extent is it obligated to pay?

A. It is obligated to pay the actual costs and a reasonable per diem based on the prevailing rate.

Q. And does the same apply to the Norfolk case, as to Mr. Ashe, Mr. Madison, and yourself?

A. Yes.

Q. Does the same apply to the Arlington case with reference to Mr. Brown and yourself?

A. Yes.

Q. And does the same apply to the Charlottesville case? And who are the attorneys in that case?

A. In the Charlottesville case we had Mr. Martin, Mr. Ealey, and Mr. Tucker as counsel of record.

Q. Martin, Ealey, Tucker, and yourself?

A. Yes, and Mr. Robinson.

Q. Is Mr. Robinson in that case also?

A. Yes, sir.

Q. Is the Virginia State Conference of Branches paying you and Martin and Ealey and Tucker in that case?

A. Well, they have not paid, but the Virginia State Conference is obligated to pay.

Q. And Mr. Robinson, of course, is employed by the Legal Defense Fund?

A. That is right.

By Judge Hoffman:

Q. When an individual plaintiff has written you a letter advising of his or her desire to have you withdraw from [fol. 369] representation, have you ever had that problem presented, and if so, what has been your reaction?

A. Judge Hoffman, I have never had any letter asking me to withdraw from any case. Now, in one or two instances we have had people to indicate that they wanted to withdraw from a case, and the most recent instance was a white family in the Arlington case. They requested that they be permitted to withdraw. We filed a petition with the Court setting forth their reasons and requested the Court to withdraw their names from the case. And that would be done in any situation if the people wanted to withdraw.

Mr. Gravatt: Are you through, Judge Hoffman?

Judge Hoffman: Yes, I am through.



By Mr. Gravatt:

Q. I want to ask you just one or two other questions. All of the attorneys whom you have mentioned, except Mr. Robinson, and I am not sure about him, are members of the Legal Staff of the Virginia Conference of Branches; is that correct?

A. That is correct, all of the lawyers I have mentioned.

Q. And those counsel—yourself and those associated with you—are the people who approve the payment of litigation under the auspices of the Virginia State Conference of Branches; is that correct?

A. No.

Q. You do that without any consultation?

A. Oh, I didn't get the purport of your question. They participate in the decisions concerning the types of litigation, yes, but I thought you meant who had the final authority about authorizing the cases, and that would be both.

Q. And that is the committee and the group which approves the attorneys' fees that are to be paid to these same people; in other words, you have got to submit a bill for your services in these cases to the Legal Staff of the Virginia State Conference and then, as attorney for the Virginia State Conference, you have got to approve your bill and pass it on to the president for his approval; is that correct?

[fol. 370] A. Bills for legal services—the only person who passes on my particular bills are the president, but Branch bills are passed with my approval and that of the president.

. . . . .

[fol. 371] THURGOOD MARSHALL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Thurgood Marshall.

Q. Where do you reside, Mr. Marshall?



A. 409 Edgecomb Avenue, New York City.

Q. What is your profession?

A. I am a lawyer.

Q. What is your occupation?

A. At the present time I am director/counsel of the NAACP Legal Defense and Educational Fund, Incorporated.

Q. One of the plaintiffs before the Court here today?

A. Yes, one of the plaintiffs.

Q. How long have you held that position?

A. I have held that particular position since 1952.

Q. Were you identified with NAACP Legal Defense and Educational Fund, Incorporated, prior to 1952?

[fol. 372] A. Prior to that time, from 1940 to 1952, I was special counsel of the NAACP Legal Defense and Educational Fund.

Q. Mr. Marshall, will you understand that in view of the length of the name of this plaintiff that hereafter when I use the term "Legal Defense" I am speaking of NAACP Legal Defense and Educational Fund, Incorporated.

A. I will so do.

Q. When was Legal Defense organized?

A. 1940.

Q. Is it incorporated or unincorporated?

A. It is incorporated under the non-profit membership corporation laws of the State of New York.

Q. Do you have with you a copy of the certificate of incorporation of Legal Defense?

A. I do.

Q. Is this it?

A. That is it.

#### OFFERS IN EVIDENCE

Mr. Robinson: If the Court please, I would like to offer the certificate of incorporation of Legal Defense in evidence on behalf of the plaintiff.

(The document was received in evidence as Plaintiff's Exhibit No. 6.)

By Mr. Robinson:

Q. Mr. Marshall, does Legal Defense have any by-laws?

A. Yes, we have by-laws.

Q. Do you have any copy of the by-laws of Legal Defense?

A. Here are the by-laws.

Mr. Robinson: If the Court please, I would also like to present in evidence a copy of the by-laws of Legal Defense.

(The document was received in evidence as Plaintiff's Exhibit No. 7.)

By Mr. Robinson:

Q. Mr. Marshall, has Legal Defense complied with the requirements of Virginia law relative to the admission of foreign corporations to function in the State of Virginia?

[fol. 373] A. Yes, we did that some time recently, I think it was last year. I don't remember the exact date.

Q. What, if any, is the connection between the organization known as the National Association for the Advancement of Colored People and Legal Defense, sir?

A. They are two separate membership corporations, both organized under the membership laws of the State of New York, but they are separate corporations.

Q. Has this been so since 1940 when Legal Defense was organized?

A. Yes, that is so.

Q. Was there ever a time when each organization had common offices?

A. Yes.

Q. Would you explain to the Court just when this was, what it was, and when it ceased to be the fact?

A. Well, when the NAACP, the Legal Defense Fund, was first set up in 1940, there were officers, directors and the members of the executive staff who held office, et cetera, in both organizations. For example, Mr. Spingarn, Arthur B. Spingarn, was president of both organizations; Mr. Walter White was executive secretary of the NAACP and he was secretary of the Defense Fund. I was special counsel of NAACP and also special counsel of the Defense Fund. A

sizeable group of directors of the Defense Fund were also directors of the NAACP. It was also true that during that period some of the executive officers like Mr. White and myself drew salaries from both organizations. That has progressively changed to the point that as of today there is not a single director that holds office on both; there is no officer of one that is an officer of the other or a director; and there is no member of the staff of the Legal Defense Fund that is also a member of NAACP. That has grown up over a period of years from 1940 until last year. There is no connection. No person that holds office with both, except that I assume that many are members of both.

Q. Mr. Marshall, what are the basic aims and objectives of Legal Defense?

A. The basic aims, purposes, of the Legal Defense are to render legal assistance and legal aid to Negro people whose rights are being denied them, particularly rights guaranteed [fol. 374] by the Constitution of the United States; to carry on an educational program giving facts on the situation; to do research, legal and scientific, in the field of race relations; and to disseminate that information and to do legal research and to publish that legal research. That is about the sum and substance of what we do.

Q. What is the organizational structure of Legal Defense that has been erected for the accomplishment of these objectives?

A. We have a board of directors, we have a president, a vice president, secretary and a treasurer; we have a Legal Staff consisting of lawyers and research people; we have no branches, no units anywhere in the country, the only office is in New York City.

In addition to the full time staff we have in New York, we have lawyers in several sections of the country on what we call a retainer basis, and, in addition to that, we have about a hundred volunteer lawyers throughout the country that come in whenever we need them. But it is not operating in the country in the general sense that most organizations operate, it operates out of New York City.

Q. Do you have, in any place in the country, any representatives of Legal Defense other than attorneys who may be connected with it on a retainer basis?

A. That is the only one—the lawyers would be the only ones, except it so happens that the present president resides in Boston, Massachusetts.

Q. Mr. Marshall, what are your duties as director and counsel of Legal Defense?

A. Well, the board charges me with the responsibility of keeping the work within the policy adopted by the board moving along, with general supervisory powers over the staff and the other people working for us.

Q. Just how does Legal Defense go about the execution of this program that you made reference to a few minutes ago?

A. Well, it operates more or less in this fashion: We get either a letter or a telephone call or telegram from either a person or a lawyer saying that they have got a problem involving discrimination on the part of race or color and it [fol. 375] appears to be a legal problem. Then the question is as to whether or not we will help. If it is a worthwhile problem, we look into it. The majority of the letters we get from prisoners in penitentiaries we have reached the point, after years, where we can look at them and tell whether they are worth bothering about, and if they are we will look into them. If the investigation conducted either from the New York office or through one of our local lawyers reveals that there is discrimination because of race or color and legal assistance is needed, we will furnish that legal assistance in the form of either helping in payment of the costs or helping in the payment of lawyers fees, and mostly it is legal research in the preparation of briefs and materials of that type. We are getting calls all the time.

Q. Mr. Marshall, I believe you testified that you have a staff of attorneys in New York City?

A. We six full time lawyers.

Q. Are they permanently stationed there?

A. They are permanently stationed in New York. They might go out on assignment.

Q. How many employees do you have stationed outside of the City of New York?

A. We have four lawyers that are on a retainer basis:

One in the District of Columbia; one in Richmond, Virginia; one in Dallas, Texas, and one in Los Angeles.

Q. Is the program to which you have made reference executed in any way other than by the attorneys concerning whom I have just been inquiring?

A. Well, we carry out our program either through them or through letter writing or telegrams, or telephone calls, transmitting to them the legal information they want, the research materials, or the money they need. It is done through the mails or by telephone.

Q. Are there any other ways and means whereby communications are had between the various representatives of Legal Defense?

A. Well, sometimes we send a lawyer direct, like they sent me to Little Rock week before last and they are going to send me there again this Friday. But that will be by plane.

[fol. 376] Q. Do you have any requirements establish by resolution or otherwise pertaining to the character of activity in which Legal Defense may become interested?

A. Well, may it please the Court, we have had considerable discussion among our lawyers and in the realm of legal cases we have established over a period of years a policy and a program, and on last year we codified it because questions were being raised, and we restated the policy. The policy is that insofar as legal cases are concerned the staff is prohibited from taking any case unless the case is referred to us by either the party directly in interest or by the parties' lawyer; that if a case is referred to us by any organization, including the NAACP we shall advise that organization that unless we are requested by the party or the lawyer, we will not operate. And the last portion of the instruction says that once the case is in process after the lawyer-client relationship has been established, that from then on the lawyer is controlled solely by the canons of ethics and by nothing or anybody else. So that lays at rest, so far as their operating program is concerned, any of the discussion that has been going on among the people in the community.

Q. Is that the current practice and policy?



A. That is the policy that has been effect ever since I have been there and it is also now stated on paper.

Q. Mr. Marshall, are you familiar with the organization known as the National Association for the Advancement of Colored People?

A. I have known about the NAACP since 1931.

Q. Do you know when that organization was organized?

A. Officially, it was organized around 1909 and was incorporated in 1911.

Q. Was it, prior to the year 1940, engaged in activities in the field of race relations?

A. Yes, it was.

Q. Why the program of Legal Defense in view of the activities prior to 1940 of the National Association for the Advancement of Colored People?

A. Well, since so far as the portion of the work of NAACP, I am familiar with the legal work. Prior to approximately 1933 the legal work was all done by volunteers. [fol. 377] Mr. Spingarn was chairman of the Legal Committee. They used a lawyer such as Mr. Morefield Story, Mr. James Marshall, that worked completely on their own, and in the New York office there was only for a period of a short time (some years back, I don't know) one lawyer; and starting around the early '30, Dean Charles H. Houston was taken on the staff of the NAACP as a special counsel and then began the more formalized help and assistance in law school. From, I think it was, '33 or '34 until '36, he was, by himself and then he got an assistant, and he left in '38 and ran along with one or two people. In 1940, the Legal Defense Fund was set up for several reasons: The important reason was the feeling of need for setting up an organization that would merely give aid and assistance in legal cases and not be involved in anything else but that, and to be put into the hands of lawyers. It was set up in 1940 and it has been running ever since along those lines.

The main distinction between the two organizations, as I see it, is that the Legal Defense Fund does only legal and educational work and to have nothing to do with lobbying or influences on legislation.



Q. At this point, Mr. Marshall, let me ask you this. In addition to its litigation activities, what, if other activities does Legal Defense engage in?

A. Well, members of our staff, and myself, do considerable public speaking and lecturing in colleges and universities throughout the country on varied subjects connected with either the law, constitutional law, civil rights or the race problem in general. And it goes not only for in this country, but sometimes we go up into Canada.

Q. I believe you have already testified that a substantial part of the Legal Defense activity consists in legal research and that type of thing.

A. Considerable of our work is research. As a matter of fact, we have three members of our staff and that is all they do is legal research. They don't try lawsuits.

Q. Getting back to the area of litigation, will you state for the information of the Court what kind of legal cases, Legal Defense, since its inception in 1940, has engaged in?

A. Well, we have been engaged in cases involving the segregation laws insofar as schools are concerned, a recreational facilities—

[fol. 378] Q. Just a minute. Was Legal Defense involved in the Brown case and the Davis case or the other group of cases, four or five in number, decided in 1954 by the Supreme Court?

A. The Legal Defense Fund was definitely involved in those cases, in all of them except the District of Columbia case; and although we technically were not involved in the District of Columbia cases, it happened that the two lawyers in that case are also members of our volunteer corps of lawyers.

Q. What other areas of legal activity?

A. Well, the restrictive covenant cases and cases up to the present time on segregated housing, criminal cases involving confessions, juries that exclude Negroes, and cases of that type; a large number of Army court martials and discrimination cases in the Armed Services during the war and even up to the present time, and transportation, voting. We haven't had any voting cases, I don't think, since *Rice v. Elmore* or *Baskins* case.

Q. Are you familiar with the decisions of the Supreme Court of the United States since 1940?

A. Some of them.

Q. In the field of race relations?

A. Some of them.

Q. Can you recall any important decision by the Supreme Court in the field of race relations that Legal Defense was not connected with? Were there any such?

A. It is according to who considers it important. I think anyone that was won by some other lawyer would consider it important. But I think that most of them that I can name, if the Court would allow me, I could name some that we were not involved in directly. One was the Henderson case involving transportation on dining cars which was written by Judge Chesnut and that was handled by lawyers representing the Negro college fraternity. But we helped in it because we had a case coming up at the same time.

Q. What were those cases coming up at the same time?

A. It was the Morgan case from Virginia, the case involving bus transportation, which came up from the Supreme Court of Appeals of Virginia. They were argued, I think, pretty closely together.

[fol. 379] Q. Were they cases involving segregated public education at the higher level?

A. I think they may have been *McLaurin v. Board of Regents* and *Sweatt v. Painter et al.*, and the other case, the latest case, is the case of *Terry v. Adams*, if I remember correctly, involving the Jaybird Formula case in Texas. We would not participate in that case, because the plaintiff in the case was well able to finance it himself and I knew he could. I suggested he could and he did.

Q. Mr. Marshall, do you recall approximately how many cases Legal Defense was interested in that have been decided by the Supreme Court of the United States since 1940? Could you approximate the number?

A. It would be approximately forty.

Q. Is there any other organization that you know of that functions in the field of civil rights in the fashion in which Legal Defense functions?

A. I know of no other organization in the country that operates on a national basis, that offers legal assistance

and legal aid in cases involving discrimination against Negroes, other than the Defense Fund; I don't know of any other.

By Judge Soper:

Q. Do you know of any that operate in the State of Virginia?

A. No, sir, I don't know of any one. The nearest thing was some organization that was interested in poll tax cases here—and that was not Negroes, that was taxes involving everybody—but it seemed to be a one-man organization, and he died and I think that is out of existence now. There is none I know of in Virginia.

By Mr. Robinson:

Q. Do you have knowledge of any substantial amount of legal activity in the field of racial civil rights that have occurred since 1940 that Legal Defense has not been identified with?

A. There would possibly be some on a local level that I would not know about but on the national level I don't think so.

[fol. 380] Q. Let me ask you this question: Are you familiar with the approximate cost of the average case of the kind to which you have testified?

A. With the exception of one or two criminal cases, I do not know of a single case that has gone to the full gamut of trial and appeal that has cost less than between fifty and one hundred thousand dollars, and that, of course, does not include counsel fees, because we very seldom pay them. The best example—and we have been trying to get our accountant to do a cost accounting job on the expenses of the Brown decision, but all I know is that it is a way over \$200,000.

By Judge Soper:

Q. When you say "going through the whole gamut" of the courts, what do you mean by that?

A. I mean some of them go off on a motion and we have a very small record; but where we have a full-size record and it is printed, and an appeal taken in the Supreme Court, and briefs printed all the way—for example, the three-judge court, we do not have that intermediary course of the Court of Appeals. We have one now from Louisiana, on its way up. The record is only fifteen or twenty pages. I would not consider that in that group. The biggest elements of cost are travel expenses for our people that come in to do the voluntary work, and the printing costs. Those are the bulk of our expenses.

Q. When you speak of this minimum amount of \$50,000, you mean a case which has gone all the way from the lower court to the Supreme Court of the United States?

A. Yes, sir, those are the ones I was talking about.

By Judge Hutcheson:

Q. Did I understand you to say that is exclusive of counsel fees?

A. Yes, sir, Judge Hutcheson. Now, if a lawyer that is working on a case is kept out of his office a considerable time, we figure out approximately what it costs his office to run a day and we pay him a per diem, and sometimes we make a lump-sum. It used to average \$25 a day; it now is [fol. 381] up around \$50. But in one instance, in the Trenton-Six case, we could do no better than pay the lawyer \$140 a day, because he was in and out of town and said he could not run his office at all, and that case lasted. I think it was, seven weeks.

By Judge Soper:

Q. Following out Judge Hutcheson's question, does this estimate of yours, of fifty to a hundred thousand dollars, include the per diem payments to the lawyers that you have just described?

A. Yes, sir, where we pay it. Sometimes a lawyer does not require anything.

Q. But I imagine in most cases they do—they have to live.

A. Well, in most cases, if it please the Court, I just insist on their taking it, and sometimes they send the check back and we have a big argument about it, but I don't think it is fair for them to bear the brunt of it. In the Brown case, may it please the Court, we had—oh, somewhere between half a dozen and a dozen meetings, where we brought scientists and research people from as far as California into New York, and although they served completely without fee, we had to pay their expenses, and those committee meetings ran around a hundred. Then, we had to get two lawyers in each state to do research, in thirty-seven states, and we had to pay their expenses. It is the expense item that runs up—and we make them send itemized accounts.

By Mr. Robinson:

Q. Do you make the extra payments on the per diem basis that you have made reference to, to your salaried or your retained attorneys?

A. The salaried attorneys, there is no way under the sun for them to get a nickel, even for a per diem. There is no per diem provision for the executive staff; there is a per diem for the clerical staff; and the retained lawyers never get anything more.

Q. Have you had occasion, other than in the Supreme Court segregation cases, to utilize the services and the assistance of attorneys who are not retained or employed by you?

[fols. 382-383] A. Well, very often we get a situation where we want an investigation made, either of local law or of local procedure, to look into a particular case to see whether it is worthwhile or not, and we will call on the services of lawyers throughout the country that we know of, and many of those lawyers south of Virginia work for us on the proviso that we never divulge their names, especially not to their families.

Q. Is this a frequent or infrequent occurrence?

A. It is infrequent.

Q. No, I mean with reference to utilizing the services of attorneys.



A. Oh, we always have our investigation made by an attorney.

Q. Now, do you have occasion to use the services of professional who are not attorneys in connection with litigation activities?

A. We use social scientists, teachers of government, anthropologists, sociologists, if there is some question coming up, especially in these school cases.

Q. Have you had to do this frequently or infrequently in times past?

A. It has been frequently since the Brown case began and it is beginning to taper off. At one time we had a formalized committee of social scientists and they preferred not to work as a committee for the Defense Fund because, they said, as scientists they did not want to be connected with any organization. They will do a job for us, but they don't want to feel they should be expected to prove it in any particular way; they want to feel free to bring it out the way they want to.

Q. In the anti-segregation school cases of May 17, 1954, the Supreme Court cited the works of certain social scientists. Do you recall whether or not any of the scientists whose works were so cited were scientists who assisted in the preparation of those cases?

A. The only name I remember offhand—we used the books of all those men who were cited, but one particular book was Dr. Kenneth Clark's, and if I remember correctly, Dr. Clark testified in the Prince Edward County case.

Q. How about the Clarendon case?

[fol. 384] A. In the Clarendon case. The Supreme Court cited his book or articles he had written. I don't know whether you call it "worked with them," but he testified in behalf of the plaintiffs in those cases.

Q. In litigation activities to which you have testified, has it been necessary to utilize the results of research and the data accumulated by employees of Legal Defense?

A. Well, the research materials that we had, we tried to keep copies of it and we are constantly comparing our research, when we find somebody else is working on the same subject-matter, and materials go back and forth and a



lawyer will write us and ask, "What do you think on this?" And I usually write back and say, "We will be glad to send you what we have on this, if you will send us what you have on the same point," and it is a constant interchange.

We also have groups of law students in many of the law schools that work on isolated projects for us and work them out and we use them. But that is going on daily, constantly.

Q. Now, Mr. Marshall, where does Legal Defense derive its income?

By Judge Soper:

Q. Before you get to that, I was wondering whether you had ever made any estimate of the expense of what might be called an ordinary case. We have had many cases, for instance, in this Circuit, school cases for the most part, which have gone through the trial court to the Court of Appeals and, in most cases, there has been an application for certiorari, in most cases denied. In a case of that sort, where the case stops with the Court of Appeals and then goes back for further proceedings, has there been any estimate of the expense of such, what you might call run-of-the-mine case there?

A. No studies have been made, sir, but I would say they would run considerably less—I was thinking of less than 2500. The only expense there is, if one of our lawyers, like myself, comes down, there is travel between New York and Richmond, which is very small, and then the only expense is the record and the brief, and that would be [fol. 385] pretty reasonable in a small-size case. I would say that we could get an ordinary case through the Court of Appeals for \$5,000. I would say that.

Judge Soper: Mr. Robinson, I don't know how my colleagues feel, but it is not quite clear in my mind as to what part the Defense Fund plays in the litigation and what part is played by other lawyers, such as appear in these cases. Are you coming to that later?

Mr. Robinson: I can undertake to do it just now.

Judge Soper: I don't want you to disturb the method.

Mr. Robinson: That is perfectly all right. I will see what I can do with this witness on that right now.

Judge Soper: Very well.

By Mr. Robinson:

Q. Mr. Marshall, are you familiar with the activities that went into the Prince Edward County case from the time of its inception—

Judge Soper: I am not talking about any particular case, but the method by which these cases are handled. Of course, there is no objection to your using a particular case, but I did not have any particular case in mind.

By Mr. Robinson:

Q. Well, rather than take the cases case-by-case, are you familiar, Mr. Marshall, with the activities that generally have gone into cases which have been handled in the State of Virginia and which did not reach the Supreme Court of the United States, except perhaps that application for certiorari was made and denied?

A. Well, insofar as Virginia is concerned, Spottswood W. Robinson, III is our representative in the State of Virginia on a retainer basis. Either somebody will write to us and say that their rights are being violated, they are a Negro and they live in the State of Virginia, in which instance it is referred to Mr. Robinson, or they might go directly to him, or the lawyer representing the person might go, and in those instances, for the most part, either Mr. Robinson or a representative directly in our office will assist [fol. 386] the lawyer that has already been retained in that case. That is one group of cases.

By Judge Soper:

Q. Well, stop right there for the moment. Where does this lawyer come from who has already been retained?

A. Of all I know, they have been lawyers that are on the staff of the NAACP State Conference. I don't know of any other instances.

Q. As distinguished from the Legal Defense Fund?

A. Yes, sir. We have no lawyer in this state that is authorized to represent us other than Robinson.

Q. Well, is it a fact that most of these cases, the ordinary cases, are brought by lawyers employed by the State Conference, or are most of the cases ones in which, through your specially retained counsel, the Defense Fund participates? Is there any division between the two groups?

A. No, sir, except so far as this is concerned: If Mr. Robinson tells us it is the type of case that he should help on, I take his recommendation, and he then helps as a representative of our office and lets us know what is needed.

Q. Well, is there usually a communication to the Defense Fund from the cases in which lawyers employed by the Conference are active? Do you always get a report that there has been such a case instituted in a county in Virginia or in a federal court in Virginia? Does that come to you as a matter of course?

A. It usually comes through Robinson. Sometimes we get it direct, very seldom.

Q. But in every case, is it a matter of discretion or judgment on the part of your regularly retained counsel to go into these cases, or not?

A. He does, and he would have that authority, because we have worked together enough and it so happens that he usually calls me up and I usually agree with what he asks for.

Judge Soper: Well, you seem to have gotten along pretty well together.

Mr. Robinson: So far, anyway, Your Honor.

[fol. 387] A. (Continuing) But I think the second type of case would be where the person would write to him. One particular case involved extradition from New York, involving a Richmond man, and before we got involved in the extradition case we called down here and had a check made on it and found out that he at least should be extradited, so we had no problem with it, but it was an investigation of the case. That is done also. But it makes not too much difference whether the case first comes from

the client or the lawyer, but it has to come from one or the other, and when these cases come through the lawyers of the State Conference, it makes no difference that they are lawyers for the State Conference as to whether we will take the case or not. It just so happens that Mr. Robinson and know that very well.

By Judge Hutcheson:

Q. Am I correct, then, in understanding from your statement that in the case in which you locally had the man referred to you, there was a representation by counsel who were members of the State Conference Legal Staff?

A. For the most part. If there are any exceptions, I don't remember them.

Q. In those circumstances, had the State Conference screened the case and determined to accept it when it came to you?

A. I assume they had, but that would have nothing to do with our judgment on the case.

Q. Well, if it came to you from a member of the State Conference Legal Staff, that would be pretty good proof or indication that it had been screened, would it not?

A. It would be, but I would still rely on Mr. Robinson, and not them.

Q. So, then, at that time the Defense Fund agrees to undertake the representation, and then Mr. Robinson joins forces with members of the Legal Defense Staff of the NAACP; is that correct?

A. No, sir; he joins then with the lawyer for the State Conference Legal Staff.

Q. That is what I meant to say.

A. Yes, sir.

[fol. 388] Q. And you compensate only Mr. Robinson?

A. He is on an annual basis, but it makes not a bit of difference whether he handles one or a hundred cases.

By Judge Hoffman:

\*Q. Have you had instances in which a request has been made to the Defense Fund from lawyers who are not members of the Conference Legal Staff and in which the

Defense Fund has participated, without the participation by the Conference Legal Staff?

A. I don't know of any such case offhand in Virginia, other than a poll tax case over in Roanoke, Virginia, where a lawyer requested our assistance and the assistance of the American Jewish Congress and the American Civil Liberties Union, in separate letters, and we met together, and a lot of things happened and the case was never filed, but we were anxious to help in that particular case. That is one, but in other areas of the country we have it every day. We work with lawyers who have had no connection with the NAACP at all, in other sections, and there is one very good example.

Q. Well, you will confer with those lawyers, but I am speaking about actual participation in a pending case and the appearance, let us say, of Mr. Robinson in either a state or a federal court here in Virginia. Have you had any instances where there has been an actual appearance, say, Mr. Robinson or yourself or any other member of the Defense Fund Legal Staff, where the Conference Legal Staff has not similarly appeared?

A. Well, I could not call them offhand, Judge Hoffman, but I know of instances where Mr. Robinson has taken cases and has had no connection at all with them; they came to Mr. Robinson first. Now, I could not name them offhand, but I know in the past of several instances when he has called me up and said, "Here is the proposition," and they didn't come through the NAACP at all; they came directly to him off the street.

Q. Of course, I don't mean that Mr. Robinson is in any way deprived from practicing law on the outside—

A. Oh, no. These are civil rights of some type. I don't mean his private practice; I mean the civil rights cases. [fol. 389] I know of instances, but I could not put my finger on them exactly, and throughout the country daily we get requests for help from some lawyers we have never even heard about and who have no connection at all with the NAACP.

Q. Of course, until recently, the law firm of Hill, Martin & Robinson existed and you had a situation where the Conference attorneys were directly connected, certainly

in the eyes of the public, with the Legal Defense Fund attorney; isn't that true?

A. Well, Judge Hoffman, yes, sir, that is true, and bear in mind that in the whole problem in having Legal Defense cases in Virginia, starting way back in the late 30's, from that time on, Mr. Hill was here first and then Mr. Robinson and then Mr. Martin. They have grown up in this from the days of Charlie Houston and myself on up to the present time. I would say if they were in organizations that were in competition with or in defiance of each other, that they would still work on a cooperative basis. So, I don't gainsay that at all, but it just so happens that some of the people will come in to Mr. Hill and some of the people will come in to Mr. Robinson, depending on whom they know about from these cases.

By Judge Hutcheson:

Q. If a client comes to a member of the Legal Staff of the State Conference and they have undertaken his representation, what does he gain by obtaining the services or the aid of the Legal Defense, only the participation of Mr. Robinson as counsel?

A. No, sir, through him—

Q. I understood that he is not paid any additional fee.

A. Whoever the particular party involved is gets the full Legal Staff plus all of these volunteer people from all over the country and I don't believe anybody else could corral that many scientists, lawyers, law professors, law school Dean that would join in giving their legal assistance.

Q. You control their activities, that is Legal Defense controls their activities?

[fol. 390] A. On a cooperative basis. They are all volunteers, but they will work for us because they believe that there is something that we are doing that deserves their attention.

Q. And the State Conference would not have that service available?

A. I am sure they wouldn't.



Q. What about any other contribution made to the State Conference? You say that a member of that staff is not compensated by Legal Defense?

A. No, sir.

Q. Costs, expenses, and investigation are borne by Legal Defense?

A. Yes, sir. Plus the fact that in the Brown cases, as you remember, they were consolidated so that all of that research that was done on that, a portion of that inured to the benefit of Prince Edward County because one brief was filed for the whole works.

By Mr. Robinson:

Q. Mr. Marshall, from what source or sources does Legal Defense receive its income?

A. We get our income solely from contributions received from letters sent by the Committee of One Hundred, or through small dinners, small luncheon meetings where contributions are asked for.

By Judge Soper:

Q. What is that?

A. The Committee of One Hundred is a committee of one hundred people organized by Dr. Neilsen, past president of the Smith College, back in 1941 or '42, predominantly of educators and lawyers who joined together for the sole purpose of raising the money to keep the organization going.

Q. What organization?

A. The Legal Defense Fund. Solely. They have no connection with any other organization.

[fol. 391] By Mr. Robinson:

Q. Does Legal Defense derive any part of its income from any source than contributions?

A. Solely contributions, no memberships. The only memberships—what I mean, there is no money requirement on memberships.

Q. Do you have with you information as to the total of contributions made to Legal Defense during any recent period?

A. The total income for last year from all over the country was \$351,283.32.

Q. Was that for the calendar year 1956?

A. The calendar year of 1956.

Q. Are you able to testify as to any connection between the income of Legal Defense and its activities?

A. I didn't get it.

Q. Do you know of any situation in which the income of Legal Defense has been adversely affected by an inability of Legal Defense to function in its normal program in any particular area?

A. Well, the answer to that is that our income was going steadily up in the last four or five years. And the State of Texas got a temporary injunction against this organization from operating in the State of Texas around September of last year and we do not now the connection between it. But we do know there was considerable publicity about it and our income has dropped off.

Q. Slightly, substantially; or to what extent, if you can recall?

A. The income for the first eight months was 152 for 1955, 246 in 1956—this is the first eight months—

By Judge Hoffman:

Q. Speaking of thousands, I suppose?

A. Yes, sir, thousands. And this year it is \$180,000. So as of now, according to these figures, it is over \$60,000.

[fol. 392] By Mr. Robinson:

Q. Does Legal Defense in its fund raising activities make any representations as to the purposes for which the funds so raised will be extended?

A. Well, whatever letters are written concerning or seeking contributions to the Legal Defense Fund, it is pointed out that we are offering the services of the outfit and we are offering legal assistance in all of the States in the Union and the District of Columbia and Alaska. And I would imagine that the State by State people say, "Well, you are not able to offer services." But we do

say that in worthy cases we will help out in a case in Minnesota just the same as we help out in one in Mississippi.

Q. Is that the basis on which you solicit funds?

A. Our mailing is a nationwide mailing except that we didn't mail in Texas while we were under the injunction.

Q. Do you have any information, Mr. Marshall, as to the portion of your income for the calendar year 1956 that you received from contributions from the State of Virginia? First, let me ask you this: Are you able to determine precisely portion of your income was indeed income derived from persons residing in the State of Virginia?

A. Well, we find that a considerable amount of our income from our professional fund raising advisers comes from people working in Washington who actually live in Virginia. Yet the way our books are kept up it shows that it came from Washington. Now there is no way of settling that at all. There is no way of finding that out.

Q. To the extent for which you know that contributions did come from persons residing in Virginia, what amount of contributions have you received during recent years from such contributors?

A. Well, in '54 the figure was \$1469.50; in 1955, it was \$6256.19. I should point out that a portion of that was a refund that came back on the Prince Edward case which was turned over to us. In 1956 the income was \$1859.20. The income to date in 1956 is \$424 from the entire State of Virginia.

[fol. 393] By Judge Hoffman:

Q. Is your organization declared exempt by the Bureau of Internal Revenue for the purpose of taxation?

A. Yes, sir. The contributors can deduct, yes, sir.

Q. Don't the contributors in the main then, as is usual in cases with most contributors, make their contributions towards the end of the year?

A. No, sir. We have watched that, Judge Hoffman. There is a small percentage of people in New York and Chicago who do exactly that. But we find that the Committee of One Hundred sends out four or five letters a

year, never more than five, never less than four, and three of those letters have gone out. There is only one more to go. The fall letter does not bring in anywhere close to the money that they do in the early part of the year. The bulk of the money is from \$5 and \$10 people. There is very little large money there. The money that comes in near the end of the year is all from people up in the New York area. We checked that last year.

By Mr. Robinson:

Q. Do you have any information with you, Mr. Marshall, as to the disbursements Legal Defense has made during the calendar year of 1956 for purposes of this program?

A. Disbursements in Virginia or in general?

Q. In general and in Virginia.

A. In general, for the calendar year of '56, the expenditures were \$268,279.03.

Q. For what period was this?

A. The calendar year of '56. In Virginia, for the calendar year of 1954, the total expenditure was \$6344.39; in '55, it was \$6,000; in '56, it was \$6490, which includes \$250 on the bond in this case; and in '57, the total expenses to date are \$3,500.

By Judge Soper:

Q. Does that sum include your regular retainer?

A. Yes, sir, it does.

{fol. 394] By Mr. Robinson:

Q. Mr. Marshall, are you familiar with the provisions and the requirements of Chapters 31, 32, 33, 35 and 36 of the extra session of 1956 of the General Assembly of Virginia?

A. I am thoroughly familiar with it.

Q. Have you made any study of the statutes with a view to determining how your operations would be affected if you were subjected to the provisions and requirements of those statutes?

A. Well, in the first place, the requirement of listing of our contributors we are convinced that if we release that

list that there would be many contributors who would not contribute merely because they couldn't afford to contribute their money.

By Judge Soper:

Q. Are you speaking of contributors to the Defense Fund alone?

A. Yes, sir. I mean, I think the same deterrent to releasing the list of the members of the NAACP applies to the release of the list of contributors to the Defense Fund. I have not checked with them, I don't know, but I think that the form of intimidation—and bear in mind that the Defense Fund is highly interracial in its setup as to contributors—

Q. By that, you mean you have both races on your contributing list?

A. Absolutely. And the Committee of One Hundred, I would say the majority of them are not Negroes. Our officers and our board are completely interracial, as well as the staff. The releasing of that list would, I am sure, be a great deterrent. There are some people, I am sure, who would say they didn't care.

Q. Are you speaking now of the effect on Virginia contributors or on contributors throughout the country?

A. I believe that if we filed a list of contributors in Virginia that we would lose considerably in every State, every other Southern State, because they would figure that they would be next to have their names released.

[fol. 395] By Judge Hoffman:

Q. You do have contributors in the form of foundations of some type occasionally, do you not?

A. We have several foundations that contribute regularly.

Q. They are generally made a matter of general information to the public anyhow?

A. Yes, sir, they are made public and there is no problem with the foundations at all. I don't think that this would affect them at all. But the bulk of our money comes from the solicitation and not from foundations. The



foundation money, with the exception of a sporadic gift here and there, would run much less than \$50,000 a year, much less.

The other point is that if we file a statement showing the source of every expenditure as well, that would be almost completely destructive of our work throughout the South because we have many lawyers in the South that do research for us that couldn't afford, under any circumstances, for their name to be used, and their name would appear on the expenditure list because we sent them checks for their expenditures. As our books are set up, each item is made by name, not only by subject matter. There would be dozens of lawyers that wouldn't be able to work for us.

Q. You are speaking now of white attorneys in the South?

A. Yes, sir. We have found that is especially true during the research on the school cases. In two States, we couldn't find anybody with the information but two people, and they could only give it to us on that condition, that we would never let their names out. And it took them a couple of hundred dollars of expenses and photographing to get it. Their names would appear on our records.

To other points, the release of membership lists and the release of our books would be detrimental to our working and and (sic) possibly destructive to a great degree.

The other main objection it seems to us is to prevent us from contributing to the expenses of lawsuits for people that are unable to finance their own lawsuits. That would completely destroy the Legal Defense Fund because we [fol. 396] have no other business to operate for, no other reason to operate.

For those three reasons, it seems to me that these bills do harm the Defense Fund. I could pick out other points, but I think those are the major points.

By Mr. Robinson:

Q. Was it your conclusion that a restriction upon contributions in the State of Virginia to legal cases would have effects on your income and your activities outside of the State of Virginia?



A. Well, I know that because of the jump in income mentioned before that a part of that income came as a result of wanting to help in the school desegregation case and if those contributors find out that we can't work on the Prince Edward case any more, they would not have too much reason to contribute. That goes for all over the country.

Q. Is there anything that you want to add to what you have already testified to?

A. I will not fall into that one.

By Judge Soper:

Q. One thing before I forget it. I do not want to interfere with the examination but I think this is pertinent. You have not made it entirely clear to me at least; you felt it desirable to split the organization work into separate parts, one the general work and the other Legal Defense work. That is No. 1 that I need some more on.

The other thing is this: It is quite obvious to every one that the two corporations have acted together, sympathetically, and I would like to know about that. How is it conducted?

First, why do you feel it necessary to have separate corporate organizations?

A. When the work was going along, there had been several plans that had been made. One was made by the Nathan Margo, who eventually became a Judge in the District of Columbia, and that was changed back and forth between Charles H. Huston and Judge Hastie and a couple of [fol. 397] back and forth. And in that transition period between around '33 and by '40, it was apparent that Legal Defense work should not have any connection with propaganda, etc., etc., for influencing litigation, that should be separated.

The other point was, and there were two or three people in the group not of those I mentioned, that said that there should be some opportunity for the tax-exempt stand. And with the two points combined again, Mr. Spingarn and a few of us decided to set up a separate corporation. With all frankness, it was set up with the complete unders

ing—the NAACP knew we were going to do it and everybody on that committee of incorporators was a member of the Board of the NAACP—and it was thought that they could go along down the line together as two organizations. As of approximately three and one-half years ago, the Treasury Department of the United States Government started an investigation and it was apparent that we should not have any connection at all. That is why the complete severance.

Q. What difference did it make to the Government?

A. Well, I don't know, sir, but when the Internal Revenue people raised questions—

Q. Did it have to do with the taxation question?

A. Yes, sir. Because the NAACP does not have the right for its contributors to deduct their contributions.

Q. Why not?

A. They never qualified before it. They were denied it. But the Legal Defense Fund does.

Q. In view of the fact that there are certain political activities connected with the NAACP, I suppose.

A. They lobby for legislation.

Q. Necessarily so.

A. Yes, sir. Ours, we don't do it at all.

Q. That throws light on it. But how about your cooperative activities since you have been divorced, legally?

A. As of last year, Mr. Wilkins, as he testified, tendered his resignation. Shortly thereafter, I resigned as Special Counsel of the NAACP. As of early this year, the Defense Fund Board passed a resolution that nobody could be a member of that Board who either was a member or officer [fol. 398] of the NAACP. So that is completely cleared up now and they are completely separated.

In actual fact, as is apparent here in the courtroom and all, Mr. Carter, who was formerly with us as Assistant Special Counsel, is now General Counsel of the NAACP and there is no question in the world that he and I discussed legal matters together, and we work together on lawsuits. There is no question about that, even though he is General Counsel for the NAACP.

Q. Is Mr. Carter General Counsel for the National body?

A. Yes, sir, of the NAACP.

Q. Where are your offices?

A. His office, the NAACP's office, is at Wilkie Building, 20 West 40th Street; the Legal Defense office is 107 West 43rd Street. Several years ago, we rented office space in the NAACP, but we decided that was bad.

By Judge Hoffman:

Q. As a practical matter, I assume that Mr. Carter has free access to the research material of the Defense Fund?

A. Yes, sir. And, in turn, we ask him to do research.

Cross examination.

By Mr. Mays:

Q. Mr. Marshall, I understand that all of your work so far as the Fund is concerned—and I will distinguish by using that term as contrasted with NAACP—has been through counsel located in the District of Columbia, Richmond, and Los Angeles.

A. Except we will help out other lawyers, but if you mean officially, that is all.

Q. Do those four lawyers handle work in certain districts? Do they have particular district prescribed for them in which to operate?

A. Yes.

Q. Now, what district is comprised in that which is represented by counsel in the District of Columbia?

A. The District of Columbia and Maryland.

Q. And in Richmond, what is the region?

[fol. 399] A. The region would be Virginia, North Carolina, and South Carolina, without restriction to go into any other area that he might want to.

Q. And how about the counsel located at Dallas?

A. Louisiana, Texas, Oklahoma, Arkansas, and New Mexico.

Q. And Los Angeles?

A. West of the Rockies.

Q. Now, do those four lawyers representing those four regions report directly to you or to someone else in your organization?

A. Directly to me.

Q. In all cases?

A. In all cases, but not regularly. The one in Texas reports regularly.

Q. Does the Texas man report to you at any particular time?

A. He tries to report around the end of the month.

Q. Each month?

A. Practically.

Q. Do you indicate to him the character of the reports to be made to you?

A. I just want to know what is going on, and most of it is confidential suggestions as to what is going on, and it involves strategy, what is going on here and there. It is not the type of report that would be made public; it is a lawyer-to-lawyer type of thing.

Q. It is a confidential report?

A. Yes, sir.

Q. Who is your counsel in Dallas?

A. U. S. Tate.

Q. What full name does he go by?

A. I think it is Ulysses Simpson. He goes by U. S. Tate.

Q. Does anyone else in any of these regions report directly to you, except these four lawyers?

A. Regularly?

Q. Yes.

A. I don't think so. There are people that will write in and tell us what is going on, or what-have-you, but no, I don't think anybody else does.

[fol. 400] Q. Well, are there any officials connected with your organization, field representatives or anything of that sort, that report to you?

A. I am glad you mentioned that. We used to have two what we call field representatives. We have changed those titles because, a year or so ago, we set up a division of teacher security to protect Negro teachers who were losing their jobs as the result of the integration fight, and I think we have Dr. Davis, former president of West Virginia State College, and we had one of the field people, Daniel E. Byrd, New Orleans. Mr. Byrd is the assistant to Mr.

Davis. The other person in field work was a good scientist and she does research work for the committee. I don't know any others, but I do get regular reports from Byrd.

Q. Do these monthly reports that you get from your regional counsel come at any particular time of the month?

A. Near the first of the month, because I have to report to the board each month.

Q. Over how long a period has Mr. Robinson been reporting to you for Virginia?

A. Mr. Robinson is in that group that does not report every month. Ever since he has been on retainer—

Q. How long has that been?

A. Can I ask him?

Q. It is perfectly all right to ask him.

The Witness: How many years?

Mr. Robinson: I have been your Southeast Regional Counsel since 1951, as I recall, and I was your special representative in Virginia, as I remember, on a non-reporting basis, from 1948 to 1951.

The Witness: That is as I recall.

By Mr. Mays:

Q. I understand that U. S. Tate, in Dallas, reports to you each month, and for how long a period has he been doing that?

A. Since he has been employed down there. I don't know how long he has been on the staff.

Q. Does he send reports at any time more frequently than once a month?

[fol. 401] A. Oh, surely, if something urgent comes up, I might call him on the telephone.

Q. But he makes the general report only once a month?

A. That is right.

Q. Mr. Marshall, I have before me a photostatic copy of what purports to be a communication to you; it is dated December 6, 1955, from the office of the Southwest Regional Council in Dallas and addressed to you as Director and Counsel for the NAACP Legal Defense and Educational Fund, in New York, and it bears the signature of U. Simp-

son Tate. U. Simpson Tate is the U. S. Tate to whom you refer?

A. Yes.

Q. I will ask you to look at that and tell the Court whether or not that is one of those monthly reports as to which you have testified?

A. This could be. I am not sure.

Q. You do not deny that it is?

A. I don't make any statement one way or the other, because it appears to be an original letter and, if it is an original letter, it must have been in my files.

Q. Well, do you know whether any examination was ever made of your files?

A. Yes, but not by anybody in Virginia.

Q. I know. Was any photostating done of any material in the files?

A. Photostating? No, sir.

Q. It was not?

A. No, sir. Copies were made.

Q. Can you tell from this that this is a photostat of the original rather than a copy?

A. Because it has the signature on it.

Q. Yes, I notice it has a signature on it.

A. That is why I assume it was an original.

Q. Maybe it will refresh your memory if I call your attention to some of the things that are stated here. This letter states:

"In compliance with your request, we hereby submit a program proposed legal action during the coming year in the five states that comprise the Southwest Region—"

[fol. 402] Mr. Robinson: If Your Honor please, I object to the methods employed by counsel for the defendants in this matter. It seems to me he might show the document to Mr. Marshall and see whether or not Mr. Marshall can identify it. If Mr. Marshall can identify it, it seems to me he can be questioned about it; if Mr. Marshall cannot identify it by reading it, I do not see any useful purpose in Mr. Mays's reading it aloud to get it in the record in this case; consequently, I object.

Judge Soper: It is a document which has not as yet been identified.



Mr. Mays: That is correct.

Judge Soper: I would be glad to hear from you on that.

The Witness: I can check files in my office. I could get them sent down here. The point is, I don't know whether I ever got it.

Mr. Mays: I wonder if it would simplify things if counsel could communicate with his office during lunch recess and find out? Can he do that?

Judge Soper: Yes, sir, that will be all right, but let us go on to something else in the meantime, unless this is a convenient time to take a recess. Would you like to do that?

Mr. Mays: It is agreeable to me, sir.

Judge Soper: Until two o'clock.

(A recess was taken until 2:00 p.m.)

---

### Afternoon Session

Met pursuant to noon recess at 2:00 p.m.

---

THURGOOD MARSHALL, the witness on the stand at the noon recess, resumed the stand and further testified as follows:

### Cross examination (Continued).

By Mr. Mays:

Q. Mr. Marshall, before the lunch recess, I had called your attention to what purported to be a copy of a letter to you from one U. Simpson Tate from Dallas, Texas, [fol. 403] dated December 6, 1955. You were to check with your office and ascertain whether or not you received the original of that letter. Have you made that check?

A. I have, Mr. Mays. My secretary was unable to find the letter, however, she checked with Mr. Greenberg of our office, who was thoroughly familiar with the record in the case of the *State of Texas v. The NAACP and The Legal Defense Fund*, and he says he remembers distinctly that I, in that case, admitted that I had received the letter. So evidently the original of the letter must be in Texas. On that basis, I think it is clear that I did receive it.

Q. This letter begins with this introductory paragraph:

"In compliance with your request I hereby submit a program of proposed legal action during the coming year in the five states that comprise the Southwest Region.

"ARKANSAS. We have pending a suit recently filed against the Van Buren, Arkansas School Board."

Then, two: "Proposed legal action will include

"(a) A suit against the Pulaski Public Schools. Pulaski is the county in which Little Rock is situated. This suit will not include independent school districts."

Do you know in that instance who the plaintiffs were?

A. Do I know?

Q. Yes.

A. No, but they are in my office.

Q. Do you know whether or not the plaintiffs were actually being represented in those cases as of that time or whether counsel had in mind that they would select plaintiffs in Pulaski in order to bring this suit?

A. No, the plaintiffs in the cases were there and, as I remember those particular cases, the parents had come to Mr. Tate and asked him to take some action to protect them in their rights. As a result of that, a lawsuit was filed in Little Rock, which is still in court. They did not file a school case in North Little Rock despite the fact that the parents asked for it because Mr. Tate thought that the School Board [fol. 404] would act in good faith, and the School Board did. No suit has been filed in North Little Rock yet.

Q. That was the second item in his communication that I haven't reached yet. And he refers next to other suits and says:

"Suits are being planned for the West Memphis area which is the most difficult area in Arkansas."

Now, in that situation, do you know whether he was actually representing plaintiffs at that time?

A. He wouldn't be contemplating the suit unless he was. I don't know of my own knowledge, but I know that is the way he is instructed.

Q. So in no case did your organization institute or contemplate instituting suit unless you actually had plaintiffs for those suits or actions?

A. We do not in the Legal Defense Fund institute any legal action unless requested either by the plaintiff or the plaintiff's lawyer.

Q. And you do not pick out a particular area or region and say, "This would be a place where we would like to bring a suit and we will try to get plaintiffs in order to bring that about"?

A. No.

Q. You never do that?

A. I have never done it.

Q. Well, does anyone in your organization ever do it so far as you know?

A. Not to my knowledge.

Q. And never has?

A. Yes, I do know of some information that we received in Texas which could be interpreted as meaning that. I don't believe it was true, but it could have been interpreted as that.

Q. Do you know of any such case in Arkansas?

A. No such case in Arkansas. As a matter of fact, when I was in Arkansas ten days ago, a group of parents of North Little Rock came and asked me to file a lawsuit for them. I told them to go back to the School Board.

Q. Do you know of any such case in Louisiana?

A. No.

[fol. 405] Q. The next item in his letter deals with Louisiana and he states:

"We have pending suits against Orleans and St. Helena Parishes."

I take it you had plaintiffs for those cases?

A. Those cases had been pending about five years. They have been pending the outcome of the Brown case.

Q. Then he states:

"Proposed legal actions will include (a) suits against three remaining liberal arts colleges."

Was that planned strategy to get plaintiffs for those actions or suits, or did you have them already?

A. We had them right after the LSU case. They came in and wanted to know—as matter of fact, in one of the institutions the faculty and the student body of the institution sent a committee asking us why we didn't do something, and we told them we would not institute a lawsuit without some students.

Q. This is another contemplated suit:

“(b) Suits against several trade schools at the secondary level but owned and operated by the State of Louisiana.”

Do you know what he referred to there?

A. Schools of Technology; cases of which have been filed.

Q. And his next item is marked “(c)” and is at the top of the second page:

“Suits against strategically chosen school boards in Eastern Louisiana contiguous to Mississippi.”

Did you understand that to mean, Mr. Marshall, that plaintiffs were in hand for those particular suits?

A. As a matter of fact, I assumed that was true. But I don't believe those cases were ever filed because there [fol. 406] was a gang of cases in those parishes where Negroes were being taken off of the registration books. If I remember correctly, they were so busy with those they never got around to the others.

Q. Do you know whether in those particular instances, that is, those “chosen school boards in Eastern Louisiana contiguous to Mississippi,” there were particular plaintiffs, people seeking to be plaintiffs and asking your aid?

A. When I received that, I assumed that Tate would not have been interested other than that.

Q. Did you pursue that to find out?

A. I remember telephoning him about the registration cases there, but I don't remember talking to him about that. I could have, but I don't remember it.

Q. Since you never took any cases for anybody unless you were asked to do so, would not that suggest to you

that Mr. Tate was going around looking for plaintiffs in order to use them in "strategically located" areas?

A. At that time I would not call—I mean, when letters came in from these men, I know they knew what the rules were and I assumed they followed them. I wouldn't expect them in each instance to say, "I have plaintiffs in this case, they have come and asked me and they are interested." I wouldn't expect that, but I assumed that.

Q. You never aided anyone in the bringing of one of these suits unless you yourself had passed on it?

A. Unless I passed on it?

Q. Yes.

A. I wouldn't doubt that some of these lawyers will take up a case that is similar to another case that they have had, if they know the policy and without asking me. As a matter of fact, several cases Tate took up, he did without my permission.

Q. You observed that he has enumerated here in this letter numbers of specific locations in which suits were contemplated, but in this instance there was a matter of strategically chosen school boards. You still thought that that involved individual plaintiffs and that he had the plaintiffs already?

A. I would say that I saw nothing there to suspect to the [fol. 407] contrary. I mean, when you read the language it is according to how you read it and what you know about it.

Q. Yes, and I read it my way.

A. Yes, and I read it my way.

Mr. Mays: I should like to mark it in evidence, if Your Honors please.

(A copy of the U. Simpson Tate letter was received in evidence as Defendant's Exhibit No. 3.)

By Mr. Mays:

Q. You testified on direct examination, and I did not get the full import of it, something about the financing of the Sweatt suit. I take it you were responding to a question concerning one Herman Marion Sweatt?

A. The full title of the case is Sweatt v. Painter.

Q. And that case went to the Supreme Court of the United States, did it not?

A. It did.

Q. And involved his admission into the University of Texas Law School?

A. That is right.

Q. Were you familiar with the means of raising funds for carrying on that litigation?

A. Yes.

Q. Will you state to the Court just what took place?

A. Insofar as the funds were concerned, they were, as I remember, paid for by my office, if I remember correctly. They had a local lawyer. The local lawyer was named W. J. Durham and I assisted in the trial of that case with about half a dozen other lawyers.

Q. Do you recall what was involved, financially, in the preparation and trial of that case?

A. It was considerable. We blocked it out. It was a huge amount because we had considerable expert testimony from law school professors throughout the country, from anthropologists, from sociologists, and we had a sociologist working full time. I don't know what it cost.

Q. And that case was taken to the Supreme Court of the [fol. 408] United States.. Are you familiar with an effort to raise additional money under the Sweatt Victory Fund Campaign?

A. I heard about it.

Q. You are not, yourself, personally familiar with it?

A. No, because they did not want me to be in it.

Q. They told you they didn't want you to be in it?

A. In pretty explicit Texas terms.

Q. That should be emphatic enough. Did you, yourself, understand that they were raising or trying to raise a fund of \$50,000?

A. Yes, I think that was correct.

Q. Did you understand that they proposed entering into a contract—

Judge Soper: Who is "they"?

Mr. Mays: Anyone.



By Mr. Mays:

Q. —proposed to enter into a contract with Sweatt concerning paying him money to go to the University?

A. I don't know anything about that, of my own knowledge. All of my connections with Sweatt were in the legal case, and after he got into law school. My relationship with him was to explain to him what he had to do. And then when he succeeded in not passing, I had to sort of worry with him then. But any relationship with anything that went on in Texas, whatever was done, I don't know anything about it except I did hear of some funds and I do remember a figure of \$50,000. As to what the fund was, the details, I don't know a thing about it.

Q. Does this refresh your memory? Do you know of any contract entered into with Herman Sweatt whereby he was to be paid an annual salary?

A. No, sir. Well, to be perfectly frank, I heard this in the Texas case. I mean, that is another case.

Q. But you had nothing to do with such a contract?

A. No, sir.

Q. You mentioned there were field representatives in some of these regions. Was there one in Texas?

[fol. 409] A. No, sir. Daniel E. Byrd operated in most of the Southern States. He might have been over in Texas on an assignment. He might have been.

Q. Were any of those field representative reports sent to your office, so far as you know?

A. They reported not regularly. They were sent out on special assignments. They were not out in regular running around. When we needed them to go some place, we asked them to go. Their job was to go in the community and try to work these matters out peacefully.

Q. Was any field representative employed other than the one you just named?

A. Two. It was Daniel E. Byrd and June Shagaloff.

Q. They were field representatives. Were there any assistant field representatives that you sent out?

A. No, sir.

Q. Do you know of one by the name of Edwin Washington, Jr.?

A. Yes, I know him.

Q. What was his function?

A. He works for the NAACP.

Q. Did you know of his activities?

A. Just in general. I know he had no connection with the Legal Defense Fund whatsoever.

Q. And his communications were not sent to you, copies of them?

A. No, sir. He might have written me a letter about something.

Q. I understand that you had only until very recently been associated with the NAACP itself?

A. As special counsel.

Q. Over what period of time?

A. From 1936 until I severed the connection last year.

Q. What was your function as special counsel?

A. To advise with lawyers and the people in regard to their legal rights and to render whatever legal assistance could be rendered.

Q. Were you asked into those situations by somebody in NAACP or did all of those communications go directly to you?

A. Oh, in the NAACP, as long as I was special counsel, [fol. 410] matters might have been referred to me from anybody on the staff.

Q. Generally speaking, does the Legal Defense Fund operate in the same manner in Virginia as it does in other localities?

A. In much the same except that it depends on the amount of activity that goes back and forth. But the same rules apply.

Q. And you operate precisely the same way irrespective of the volume of work you have to do?

A. My roles were the same, I would say.

Q. Do you remember what was the largest single contribution received by the Legal Defense Fund within the last year?

A. Within the last year?

Q. Yes.

A. Within the last year, I would say it was \$15,000. That

is the largest I think within the last year. I could be wrong. There was a \$50,000 grant that—that was year before last.

Q. Do you remember, approximately, the largest single contribution received by the Fund in the State of Virginia in that period?

A. No, sir.

Q. It would be rather small?

A. I should think from the figures it would be rather small.

Q. Does the Legal Defense Fund solicit contributions in Virginia in the same way it does in other parts of the country?

A. Yes, sir. The letter is sent out by the Committee of One Hundred to a mailing list and the same letter is sent to everybody. Bear in mind, the difference is that in some areas, like New York, Detroit and Chicago, dinners and functions are held. But nothing like that is done in Virginia. The only solicitation in Virginia is by mail or telegram.

Q. Now, do you remember when it was that the Legal Defense Fund itself registered before the State Corporation Commission here in Virginia?

A. It was within the past year. I don't remember exactly. [fol. 411] Q. Were you called on by the State Corporation Commission to do that, or was it by your own volition?

A. Well, if we were called on, I don't know anything about it. The reason I did it was, I was not sure whether we were doing business in the state or not and we had this lawsuit in Texas, with a lot of furor about registering, and, since Mr. Robinson was here, rather than having the argument, we decided to register.

Q. It is my understanding that the constitution of the Legal Defense Fund provides that legal aid shall be rendered only to those who are not able to pay for legal services. That being true, how does the Legal Defense Fund investigate the financial condition of various plaintiffs for whom you bring suits?

A. The reason for that is that under the laws of New York we were required to get approval from the state to operate as a legal aid society, under the barratry provisions of New York. Then, after notice to all three bar associations, the County Bar, the City Bar, and the Bronx

Bar, the County Bar approved us as a legal aid society. What I understood by that is, that if a person is not in a position to pay, that we are authorized to represent them. I do not check upon them. There are instances, like for example the cases to equalize teachers' salaries. We took the position that the teachers in a group made enough money to pay for their lawsuit, and in hundreds of cases that were filed, in every single instance that the teachers paid all the expenses except my salary. On cases involving golf courses, we took the position that if a man has time enough and money enough to play golf, he has money enough to finance his suit and we won't take it. We take park cases—one in Texas where we knew the man could pay. So, I think the answer is, that we do not make an investigation, but we can tell pretty well whether they are people who are able to finance a lawsuit.

Q. But it is your purpose to represent only those people who cannot afford to pay for litigation?

A. To finance a case all the way up, that is true.

Q. Confining yourself merely to the school cases brought in Virginia, financed by your organization, to what extent, if any, has an investigation been made, as far as you know?

[fol. 412] A. Well, I saw the names of the people in Prince Edward County and I concluded they could not get a case though the Police Court. Now, I may have been wrong.

Q. Did you make an investigation as to the plaintiffs in the Norfolk and Newport News cases?

A. No, sir.

Q. Do you know whether anybody else did?

A. No, sir.

Q. Did you make any investigation to find out?

A. No. I assumed they knew what the rules were.

Q. And the same would be true as to the case in Arlington?

A. I understand since I have been here in this court that one of the plaintiffs, whose name I do not remember, in Arlington County is not a pauper.

Q. When you say "not a pauper," you mean by that reasonably able to take care of counsel fees?

A. Well, I think he would be able to take care of the case through the lower court. I have just found that out.

Q. In fact, counsel fees are underwritten by the Fund, aren't they, as to that plaintiff?

A. No, sir, not by the Fund.

Q. By whom?

A. I assume by the State Conference. I don't know.

Q. As far as you know, the State Conference has obligated itself to take care of them?

A. Well, I have heard testimony yesterday to that effect.

Q. Mr. Banks, wasn't it?

A. I think so. I do not know it of my own knowledge.

Q. Do you know what, if any, investigation was made in Charlottesville of the capacity of the plaintiffs to pay?

A. I know of no instance in which a person has made an investigation to find out whether the party can pay the costs of this kind of litigation.

Q. In response to a question, I think, by Judge Soper, you stated that in some of these cases the expenses ran as high as \$200,000?

A. That is right.

Q. Weren't you referring then specifically to the Brown and associated cases which went to the Supreme Court of the United States?

[fol. 413] A. And the Sweatt and McLaurin cases, which were over a hundred thousand, I would say. The restrictive covenant cases were not quite that much. The answer is, I know of no case that cost that much. I am sure about that.

Q. I may be repeating some things that have been said, but I am not sure it is repetitious. Isn't it true that having established the law as to the school cases, these cases that follow after are far less expensive?

A. Oh, surely.

Q. Will you state again what the current cases are costing in Virginia?

A. In Virginia?

Q. Yes.

A. I don't know. Seriously, I do not. It could not be anywhere near that.

Q. Didn't you testify it would be more like \$2,500?



A. That is what I would think. That would be a guess, or less.

Q. Wouldn't you say that would be reasonably within the reach of fairly well-to-do persons?

A. I would think so.

Q. A person who owned a home of, say, fifteen or twenty thousand dollars?

A. I can't judge it by what they own.

Q. You can't judge it by the amount of their assets?

A. If I knew their assets.

Q. I am merely asking whether that would mean anything to you if you knew that?

A. If I knew he had a \$15,000 home free and clear, he would be in pretty good shape.

Q. And it is easy to find out whether a person has such property from the land books?

A. I think so, but I don't know of anybody that has access to their credit ratings.

Q. I am merely asking about the landownings. Now, in answer to certain interrogatories on several cases now pending in the Federal Courts in Virginia, as to any financial assistance from a legal fund, specifically, what cases were you referring to?

A. I would imagine that all of them, or whenever they would need financial assistance if they got into protracted [fol. 414] litigation. Specifically, the Prince Edward case is on appeal and is going to cost some money.

Q. In answer to Defendant's Interrogatory No. 34—I will be glad to present them to you to read, but I think you will remember—it was stated that the income of the Legal Defense Fund raised from contributors residing in Virginia totaled \$6,609.70 for the years 1954, 1955, and 1956. I thought, however, that you had testified that in 1955 alone the amount received was approximately \$6,000. Is that what you stated?

A. Yes, Mr. Mays. The reason I explained was, that the auditor has more different areas than I know of, and he had the refund on the Prince Edward case on another side of the ledger.

Q. Do you know what the amount of that refund was?



A. No, sir, I do not. I think if I added it up I would.

Q. I am not looking for pennies, but I am trying to reconcile the response in the interrogatory with that testimony.

A. All I have here is \$6,256.19, with the asterisk, saying, "Includes refund from the District Court in Prince Edward case." I can get it for you.

Q. Will you try to obtain that? We may wish to put it in the record. \$2,975.19

A. Yes, sir.

Q. The interrogatory to which I referred was signed by you, wasn't it?

A. Yes, sir.

Q. And the response contained facts within your own knowledge?

A. I think I said it was not within my knowledge. It was referred to me because those figures are given me by my accountant. I hope I said that. I believe it to be true. These figures all come from our accountant. I don't even look at the books.

Q. You rely on the accountant, as we all do?

A. I have to.

Q. In answer to the Defendant's Interrogatory No. 58, it was stated that the Legal Defense Fund collected [fol. 415] \$1,859.20 from activities in Virginia during the year 1956. I believe that was in line with your testimony also, was it not?

A. Yes, sir.

Q. Do you know what the Legal Defense Fund's gross income from all sources was that year?

A. What year is that?

Q. 1956.

A. Yes, sir, I do. The gross income for 1956 from all over the country, the calendar year, was \$351,283.32.

Q. Now, it has been stated in answer to Interrogatories Nos. 71, 74, 77, 80, 83, 86, 92, 95, and 99 that there is no relationship between the Legal Defense Fund and the attorneys representing the plaintiffs in the various segregation suits now pending in the Federal District

---

Figures in italics pencilled notation.

Court in Virginia, except that Spottswood Robinson is compensated; is that correct?

A. That is correct. If you put it on compensation, I say it is correct, so far as I know; if you put it on any official connection, I could say positively they have none.

Q. That compensation to him comes through the Virginia Conference; is that correct?

A. To Robinson?

Q. Yes.

A. No. We pay him an annual retainer out of the Legal Defense Fund.

Q. That I knew, but does he also receive additional funds for representation of plaintiffs in the school segregation cases?

A. Not that I know of. I doubt it.

Q. It has not come to your knowledge?

A. No.

Q. And you would not expect that?

A. Well, I don't know. These other lawyers, all we know is that they have requested Mr. Robinson and Mr. Robinson, with my consent, has agreed to help them in the case. That is the only connection we have. Sometimes I come down, too. I was, for example, in Norfolk. I just counselled with them and gave them whatever help I could. I did not participate in the trial.

Q. I take it from your previous testimony that the Legal [fol. 416] Defense does not instigate or maintain or give legal advice in lawsuits in which it is not a party or in which it has no financial interest?

A. Unless requested to do so.

Q. And what happens then?

A. If requested to give legal assistance in a case which involves violation of the United States Constitution, we will give that assistance, whether we have any pecuniary interest or we are a party in interest. We will do it, we have been doing it.

Q. You testified, I think, that there are some lawyers in the state (I think white lawyers) to whom you refer matters from time to time for advice. Did you not so testify?

A. No, sir. I said there was one lawyer in Roanoke, who is now dead, that requested assistance from several organizations in a poll tax case and I agreed to help and all of the organizations got together. That is the only instance.

Q. I probably do not make myself clear to you. Do you not, or have you not from time to time employed white lawyers to give advice to you—employed them as counsel in order to supply opinions or information to the Fund?

A. We have not employed them as counsel; we have employed them for a specific legal research job, to go and check records, et cetera. Yes, we do, as well as Negro lawyers, for that purpose.

Q. And they have come to you and said they could not represent you any further if their names became public?

A. Yes, sir.

Q. All of them?

A. No, sir. Some of them are proud to.

Q. And others are afraid to, or ashamed to, or what?

A. One lawyer that I had to handle cases for us regularly all the way up to the Supreme Court was also counsel to the late Senator Bilbo.

Q. Well, that is a means of identification.

A. Well, it is obvious he can't afford to be identified with us.

Q. Yes. When you split off the Fund from the Association (and I mean the NAACP), wasn't the real purpose [fol. 417] of that to enable people to have tax deductions which they could not get from the NAACP?

A. That was one of the reasons, but it was not the primary reason. The primary reason was the need to get the legal work apart from the general run-of-the-mill propaganda actions on legislation.

Mr. Mays: I have no further questions.

Mr. Robinson: I have no further questions.

MARTIN A. MARTIN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Mr. Martin, would you relate for the record your address and your profession?

A. My residence address is 1222 Overbrook Road; my office address is 118 East Leigh Street; my profession is attorney at law.

Q. Have you any connections with the National Association?

A. For the Advancement of Colored People?

Q. Yes.

A. I am the vice-chairman of the Legal Staff of the Virginia Conference of Branches of the NAACP and a member of that Legal Staff.

Q. Is that a voluntary job, or a job in which you get compensation?

A. It is a voluntary job. Sometimes, in some cases which we handle for private clients, we send our bill to the NAACP, but as far as I am concerned it is a voluntary association.

Q. How long have you been associated in that capacity?

A. Since the Legal Staff was first organized; I believe it was somewhere around 1943 or 1944.

Q. You indicate that you do get some compensation from the Conference for handling some cases?

A. Yes.

[fol. 418] Q. Would you estimate that that is a substantial or a non-substantial portion of your total income?

A. Very nominal proportion of my income.

Q. With respect to the amount of time and energy devoted to that kind of work, would you say that that is a substantial or a non-substantial portion of your time?

A. The time devoted to the work in that type of cases is much more than the compensation—the relative compensation involved.

Q. Now, Mr. Martin, you are aware of these statutes that are under attack in this lawsuit?

A. Yes.

Q. Referring you particularly to Chapter 31, Chapter 33, and Chapter 35, what, if any, effect would that legislation have on your activities with the Association?

A. Well, the activities which I have been involved in with the NAACP have been primarily voluntary and they have been cases which involved a great number of colored people, cases that I, as a colored person, was personally interested in and in which I was trying to help my people. The monetary remuneration was of very little concern; as a matter of fact, the monetary remuneration is very small in any circumstances; but they were cases in which I was trying to help my fellow-man. In most instances they were cases where the persons either went to officials of the NAACP themselves in the first instance and were referred to the chairman of the Legal Staff or to me as vice-chairman, or sometimes they came to us directly, asking us for help in cases which involved a great number of people, such as transportation cases, such as school cases, and the like, in which they just didn't have the money to protect their rights, and they would ask us for help. In those cases I would get into them in certain instances and try to give them help. In most cases they did not have money enough to more than just pay the court costs, and they would have meetings in church and take up collections to help these people bear the expenses of litigation, and in most of the instances in which I was involved I would tell them not to pay me, because I didn't want to keep all those records and, as far as I was concerned, the NAACP was mainly [fol. 419] a coordinating agency that would collect the money and would send the money to the NAACP and when and if they ever collected the money, they would pay those bills. Sometimes it was years after the case was over before those bills were finally paid.

Now, I thought I was doing a good job in trying to help my fellow-man, but all of these laws came up and a serious doubt arose in my mind whether under those laws I would be guilty of a crime in trying to help my people. I just don't know.

Mr. Carter: That is all.

## Cross examination.

By Mr. Mays:

Q. In the testimony just given you were not confining yourself to school cases, were you?

A. Certainly not, no.

Q. Are you familiar with the manner in which the relationship between plaintiff and attorney arose in the several school cases in Virginia, or in any of them?

A. In some of them in which I was involved, I was.

Q. Which ones do you have in mind now?

A. The original case starting in Virginia, the case against the School Board of King George County, the case against the School Board of Gloucester County, the case against the School Board of Newport News City. I was directly involved in all of those.

Q. How were the plaintiffs brought to you in those cases?

A. The first school case we had in Virginia was a case against the County School Board of King George County. Reverend Smith (I forget his initials) came to me with a group of other persons up there and their children were getting, according to him an extremely inferior education, they wanted something done about it; they did not have the money; they were up there in a small county, one of the smallest counties in Virginia; and they asked for help; they did not have the money to defray the expenses. I advised them that we would have to have some kind of reimbursement to help defray the expenses and I thought [fol. 420] they could get the NAACP to help. Meetings were held in various churches in King George County. I personally went up there and attended some of those meetings—went to the various schools and got photographers and took pictures, and the photographers, of course, had to be paid. We finally filed a suit against the School Board. Those people came to me personally. They asked me for NAACP help to try to vindicate their rights, and that was given.

Q. And the fees and the expenses were paid entirely by the fund.

A. By the fund which was collected by the NAACP.



Q. Did all of these plaintiffs come to you and ask for representation?

A. I think that they did. At that time Oliver W. Hill was one of my partners and Spottswood W. Robinson was one, and then we three worked on that case.

Q. How about the Newport News case?

A. I think they went to Oliver W. Hill in the first instance. We cooperated on their case also.

Q. Now, are you on this Committee of Thirteen Lawyers representing the local Virginia Conference?

A. That is right.

Q. When people come to you to get you to assist them and you find it requires the help of the Fund, what do you then do?

A. I advise them in the first instance generally as to the time and expense and amount of money it is going to cost, and if they are able to handle the case privately, I advise them that is the best thing to do. If they say they just don't have the money but still want to vindicate their rights—and they usually in most instances assume that we can get the NAACP to help them in the programming of the activity.

Q. Now, as a member of this Committee of Thirteen Lawyers, you are one of those who has to pass in every instance on the help that is given in Virginia, do you not?

A. Yes.

Q. What part do you take in the selection of the lawyer for a particular case?

A. Generally the cases are referred to Mr. Oliver W. Hill as chief counsel. In his absence they are referred [fol. 421] to me. If it is a case arising in a certain locality and there is an attorney in that locality in whom I have confidence, I will refer the case to that attorney.

Q. Isn't that attorney in whom you have confidence in a particular area always a member of that Committee of Thirteen?

A. Generally speaking, that is true.

Q. Well, do you know of any exceptions?

A. I think there were one or two exceptions within the past ten years, in which cases were referred or were handled

partly or primarily by other attorneys. I don't have the names at my fingertips, but I think there were.

Q. Weren't they cases incidentally in which he was already in the case at the time it came to your attention?

A. Probably so.

Q. But do you know of any instance where you employed counsel not members of your Committee of Thirteen who were already in the case?

A. Well, generally not because the attorneys with whom I associated, the Committee of Thirteen, as you call them, are attorneys that I see practically every day or regularly. I try cases with them, I have confidence in them. I certainly would refer a client of mine to an attorney whom I didn't know.

Q. Well, you do know right many attorneys who are not a member of the thirteen?

A. Yes.

Q. And who are quite capable?

A. That's right.

Mr. Mays: Thank you.

Redirect examination.

By Mr. Carter:

Q. Is it or is it not a fact, Mr. Martin, that those 13 attorneys that you referred to are attorneys that you know who have expertness in the field of race discrimination so far as the law is concerned?

A. That is true, they are attorneys that I have been associated with over a period of years and in these types of cases.

[fol. 422] Mr. Mays: We do not mind, Your Honor, a certain amount of leading, but I mention it because I don't know how far it is going.

Mr. Carter: We have finished.

Mr. Ealey.

ROLAND D. EALEY, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you give your address and your profession?

A. 1503 North 25th Street, Richmond, Virginia. I am a lawyer.

Q. What, if any, connection do you have with the National Association for the Advancement of Colored People?

A. I am a member of the Legal Staff of the Virginia State Conference of Branches and a member of the Legal Staff of the Richmond Branch of that Association.

Q. Have you handled any cases in litigation in court, the funds of which were paid by either the Richmond Branch or the Virginia State Conference of Branches?

A. Yes, sir, I have handled them that have been paid for by both the Virginia State Conference of Branches and of the Richmond Branch.

Q. Would you estimate that whatever fees you have received from this kind of work and from the Association, either the Branch or the Virginia State Conference, that that amount of income that you have received is substantial or insubstantial portion of your total income from your practice of law?

A. Very insubstantial.

Q. Directing your attention to the amount of time and energy necessary for this kind of litigation, is that a considerable or insubstantial amount of time in connection with the rest of your practice?

A. Well, the time that I have put into most of it has been far out of proportion to the compensation that I have received from it.

[fol. 423] Q. To your knowledge in the handling of a case which the Richmond Branch or the Virginia Conference has paid the fees and expenses for, have you ever handled any case to your knowledge in which the plaintiffs in this case whom you represented did not want to use you as counsel and did not desire your services?

A. No, all of the people that I have represented have been those that they themselves have desired me to represent them, or at least no objection was raised to me representing them.

Q. Directing your attention to the statute in issue in this litigation, and I am directing your attention particularly to those which raised the question of barratry and so forth with respect to lawyers handling the litigation in which the funds and fees are paid by someone other than the party in interest, how is that affecting your participation in the work of the Association in your activity as a member of the Legal Staff of the Virginia State Conference or the Legal Redress Committee of the Richmond Branch?

A. Very candidly, I have been somewhat hesitant to do much after the enactment of those statutes that you referred to for fear of jeopardizing my career, a possibility of being disbarred or losing my entire professional career.

Cross examination.

By Mr. Gravatt:

Q. Mr. Ealey, as a member of the Legal Committee of the State Conference of Branches, do you go around and make speeches at branches of the National Association all over the state?

A. Well, I have made speeches at branch meetings, not as an attorney, but as a member of the Association.

Q. In those speeches, is it customary for you and other members of the Legal Staff to call attention to laws or administrative procedures which you consider to be unconstitutional and to encourage people to institute lawsuits to attack those statutes and administrative procedures?

A. Well, I have never made a speech and encouraged anyone to file a lawsuit attacking any statute. Usually [fol. 424] when I speak, it is generally in the area of social science, political science, public relations, race relations. But I have never, and I don't know of any other lawyer who is a member of the State of Virginia State Conference who has encouraged anyone to file a suit attacking any law. Not to my knowledge.

Q. Mr. Wilkins has testified in this case, substantially,

that it is a part of the function of the Branches and of the State Conference of Branches that if they believe a law is unconstitutional, and if they believe it should be challenged, that they urge people to do so, and if anyone steps forward, we agree to assist him, if other things are all right. Do you disagree with that as a program for the operation of the State Conference of Branches and for the branches of the NAACP throughout Virginia?

A. Well, Mr. Wilkins is the chief administrative officer of the Association and Mr. Banks is the chief administrative officer of the State Conference, so they are better versed on the program than I am.

Q. Do most of the cases that have come to your Legal Staff come to you as the result of the activities of the NAACP chapters along these lines?

A. No, sir.

Q. They do not?

A. They do not.

Q. Is the litigation that you have been involved in criminal litigation or is it litigation in respect to school segregation or bus segregation, or what type of segregation have you been involved in?

A. The most that I have been involved in have been criminal in the area of bus transportation. That is about all.

Q. Were these cases referred to you by the chairman of the State Conference of Branches or did they come to you directly?

A. Most of them reached my office by referral from the Executive Secretary's office or the chairman of the State Legal Staff.

Q. That is the Executive Secretary of the NAACP?

A. That is right.

Q. Or of Mr. Hill, the chairman of your Legal Staff?

[fol. 425] A. That is correct.

Q. And they were referred to you from those sources?

A. That is correct, most of them.

Q. So that you do not then know how the cases arose and what stimulated the cases because they came to you through reference from these bodies?

A. In most instances. Now the last major one that I

engaged in was a criminal case, the Lloyd-Dobie case, and that case reached me by referral from a lawyer in New York. The boy's brother lived in New York, conferred with counsel there, and that counsel called me at my office and asked me if I would look into the matter and see if we could get monetary assistance for the boy. He was then facing electrocution. The time for appeal had virtually run out. I told them that I would be glad to see what could be done. After looking into the matter, I saw that it was not the type of case that the NAACP normally would give financial assistance in. However, I did discuss it with another member of the Legal Staff, Mr. Robinson, and he was of the same opinion. That the man needed some help, as we saw it. His time had virtually run out and he was set to be electrocuted within a matter of two or three weeks. So I did go to see him.

His brother came down to see him and we went over to to (sic) the Virginia State Penitentiary. He was then in the death cell. We conferred with him. He wanted me to represent him. I advised him then that it might not be possible to get any aid for him as far as the NAACP was concerned, but I would do all I could. So we contacted the Judge for a stay. He refused at first. We contacted the Governor for a stay. He refused it. We went back to the Judge, so he granted us a stay. After the stay was granted, then we filed a motion under the statute in the nature of a writ of error, coram nobis—

Q. I don't care about going through the whole court.

A. I wanted you to see that all of these matters were not referred by Mr. Banks or Mr. Hill. However, the NAACP did help pay the printing of the record after the appeal had been granted, writ of appeal had been granted by the Supreme Court of Appeals.

[fol. 426] Q. That is one instance when a case came to you from an outside source?

A. That is correct.

Q. That is not ordinarily true?

A. That is true.

Mr. Carter: Mr. Tucker.



S. W. TUCKER, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you mind giving your address and your profession?

A. My name is S. W. Tucker; my address is Emporia, Virginia; and I am an attorney at law.

Q. Have you any connection at all, Mr. Tucker, with the Virginia State Conference of the National Association for the Advancement of Colored People?

A. I am one of the Legal Staff of the Virginia State Conference of the National Association for the Advancement of Colored People.

Q. Have you handled any litigation in which the funds were paid by the Virginia State Conference of Branches or any other branches of the NAACP?

A. I have handled litigation for which funds were paid by the Conference and I have handled cases for which funds were paid by the individual branches.

Q. Would you estimate that the funds and fees that you have received from such litigation is a substantial or non-substantial portion of your total income from the practice of law?

A. It would be a very nonsubstantial portion.

Q. How would you estimate the time and energy and effort devoted to these cases in terms of your practice?

A. We don't get anything that is at all remunerative for the amount of time and the energy that we do devote to the cases. The budget just won't afford it.

[fol. 427] Q. At the present time, in view of the passage of the statutes that are now at issue here, Mr. Tucker, do you feel that you can continue to function as a member of a legal staff of the Virginia State Conference or handle cases that are referred to you by a branch of the NAACP?

A. Without any NAACP financial support, you mean?

Q. I mean, in view of these statutes.

A. I just wanted to know whether you are asking me the

question whether I could handle the cases without the NAACP financial support.

Q. I mean, if the NAACP is to pay the fees and expenses in the cases, do you feel that in view of these statutes which bar such payment—

A. I think I understand the line of your question now. In other words, the question would be whether I would consider that my license to practice law and my professional standing would be in jeopardy by reason of the statutes?

Q. Yes, sir.

A. My interpretation of the statute would be that I would be in violation of the statutes so that my license to practice law certainly would be in jeopardy.

Cross examination.

By Mr. Gravatt:

Q. Mr. Tucker, what branch of the NAACP are you affiliated with?

A. Which local branch?

Q. Yes.

A. The Greenville County Branch.

Q. Are you on any committee of that Branch?

A. I think not. I know that sounds evasive, but there was a time when I was a member of the Executive Committee, but I think currently I am not even listed that way.

Q. Do you have a Redress, Legal Redress Committee?

A. The Greenville County Branch does not, no.

Q. It has been testified here by the National Secretary of the NAACP, Mr. Roy Wilkins, and this is in respect to the activity of the local chapters, that, "If we believe that a law is unconstitutional and believe that it should [fol. 428] be challenged, then we urge others to do so; and if anyone steps forward, we agree to assist him, if other things are all right."

Had that been your experience in your operation of the branch chapters of the NAACP, that they generally proceed in that fashion?

A. I think I would have to answer that with reference to my own experience.

Q. That is what I am asking you.

A. The cases that I have handled for branches usually involve acts of violence. In the majority of instances, acts of violence against a Negro person committed by a white person in which I have been requested either to assist in the prosecution on the criminal side, or else to file against the person for the assault. They have not generally involved the constitutionality of statutes. So I wouldn't have any personal experience on which I could comment on that one way or the other.

Q. Those cases that you have referred to, do they come to you from the local branch of the NAACP or do they come through the Legal Staff of the State Conference of Branches?

A. Both ways. By and large, they have come from several of the local branches in Southside, Virginia, but there have been some referred to me through the Conference.

Q. Whenever one of the local branches in Southside, Virginia, gets a matter of that kind that they think needs legal redress, they refer the individual to you for legal assistance?

A. That has happened, yes.

Q. When you are paid by the local branches, are you paid on a per diem basis or do you simply submit a fee as an attorney, ordinarily—submit a fee as an attorney ordinarily does in a case?

A. I submit a bill. I govern myself by the per diem that the State Conference has adopted. I certainly have never exceeded that and, in many instances, I have accepted compensation far less than that.

Q. What is the amount of the per diem that has been approved by the State Conference?

[fol. 429] A. It is \$50 or \$60. I have to always refer to my records to find out which figure it is. I am not sure. I think it is \$60. It is \$50 or \$60.

Q. In addition to that, do you charge for mileage and expenses?

A. Mileage and expenses, yes.

Q. Have you ever turned down any cases that were referred to you by the branch of the NAACP or by the State Conference of Branches?

A. I have had no occasion to turn down any that have been referred by the State Conference. I have had occasions where some trouble occurred in the community and some of the branches people have asked me to come in and investigate. I have found cases—instances where their fears were not warranted. I so advised them. That was the end of the matter. I found others where there was cause for concern, and some of those instances something was done about it.

Q. Do you think that your legal relations with the branches of the NAACP and the State Conference of Branches, as a member of the Legal Staff, insofar as your employment as an attorney is concerned is a characteristic of the relations of most of the attorneys who are members of the Staff of the State Conference of Branches?

A. I should think so.

Mr. Gravatt: That is all.

#### PLAINTIFFS REST

Mr. Robinson: If the Court please, that seems to be the case for both plaintiffs.

Mr. Mays: May we have a short recess, if Your Honor please?

Judge Soper: Yes, sir. Recess for five minutes.

(A short recess was taken, and the hearing continued.)

Mr. Gravatt: If the Court please, the defendant would like to call Mr. Spotswood Robinson as an adverse witness without in any way disqualifying him as counsel in the case.

Judge Soper: Mr. Robinson.

[Vol. 430]

EVIDENCE ADDUCED IN BEHALF OF THE DEFENDANTS

---

SPOTSWOOD W. ROBINSON, III, called as an adverse witness by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. State your name, residence, and occupation.

A. My name is Spotswood W. Robinson, III; my residence is 2500 Brook Road, Richmond, Virginia; I have a law office at 623 North Third Street, Richmond, Virginia; I am an attorney at law and I am Southeast Regional Counsel for the NAACP Legal Defense and Educational Fund, Inc.

Q. You were formerly associated in partnership in the practice of law with whom?

A. With Oliver W. Hill and Martin A. Martin as partners. There was a fourth attorney in the office who was not a partner, James R. Olphin.

Q. You have severed that relationship?

A. That is correct.

Q. When did that take place?

A. About the 1st of September, 1955.

Q. Did the dissolution of your partnership relations with Mr. Martin and Mr. Hill have anything to do with your affiliation with the Legal Defense Fund and their affiliation with the State Conference of Branches of the NAACP?

A. No, it did not.

Q. What are your duties as Regional Counsel for the Defense Fund?

A. To engage in research of a legal character when there is occasion therefor, to render service to parties who may personally request me to do so to render service for them, to render service to litigants upon the request of their attorneys, such latter services to be rendered along with the services that their own attorneys will render for them.

Q. What investigation, if any, are you required to make of the litigants or clients whom you represent on behalf of the Legal Defense Fund?

[fol. 431] A. If it is a situation in which I know that a party is able to conduct his own litigation without the necessity of assistance from the Legal Defense Fund, under such circumstances I would not undertake to represent that party.

Q. Do your duties require you to make any investigation of those persons who apply to you for legal assistance to ascertain whether or not they are financially able to pay for legal service?

A. If you mean by that, Mr. Gravatt, obtaining a credit report, looking extensively into the financial situation of the parties who may request that assistance, the answer is no; and, as a matter of fact, as a matter of practice, I have never done it.

Q. Do your duties as Regional Counsel require you to make any investigation of those whom you represent on behalf of the Defense Fund?

A. I consider that the obligation on me in that regard, Mr. Gravatt, simply requires me to exercise my judgment upon the appearances as they do appear to me and not to represent parties where it is plain that those parties are able to afford their own legal counsel.

Q. Do you or do you not make any investigation to ascertain whether or not the prospective client can finance his own litigation?

A. I do not make an investigation beyond the point of looking at the client, if the client comes into the office, exercising judgment as to appearances as they do appear, and considering those in the light of what I am requested to do. It so happens, Mr. Gravatt, that in recent times most of the requests for my services have come to me, not from individual litigants, but from attorneys who have been engaged to represent those litigants; and under those circumstances I simply rely upon the attorneys who ask me to lend them assistance in the way of my own services in and about those cases. I am also somewhat familiar with the expense of litigation of that kind. They have been principally matters affecting the matters of segregated pub-



lic schooling, and I know, as a matter of fact, that in the ordinary situation a party is not alone able to employ his own attorney, to pay his own court costs, and to finance [fol. 432] his case through the courts to the end that he might obtain his constitutional right to a non-segregated education.

Q. Have you ever refused to represent any person who has applied to you, either personally or through his attorney, on account of that person's being financially able to finance his own litigation?

A. Mr. Gravatt, I believe so, in this sense. There have been occasions when people have requested me to represent them in civil actions out of which they sued. There have been such situations in which I have declined to act. There probably was a double reason in that regard. One of the reasons was that I felt that under those circumstances they would be able, without my services, to obtain other counsel and consequently it would not be necessary for my time or for the money of Legal Defense to go into a case of that character. It seems to me I have had a few cases during the time that I have been connected with Legal Defense and Educational Fund that have fallen in that category.

Q. Are those types of cases of a type which are within the policy of the Legal Defense Fund to handle, that is, suits to recover damages?

A. Let me give you an example of one that comes to mind. A person has been segregated on the basis of race on a public transportation facility. Prior to the time of the decision of the Supreme Court in the Morgan case and the decisions of the United States Court of Appeals for the Fourth Circuit and the Supreme Court of the United States on denial of certiorari in the Chance case, in all probability I would have rendered service in my capacity as a representative of Legal Defense to those persons. Once, however, the principle was established that a person had a right to travel in interstate commerce without being segregated on the basis of race or color, thereby establishing the principle that a carrier subjecting such a person to a racial discrimination of that kind might render itself liable in damages on that account, there have been situations

where I have declined, upon the request of such persons, to render services for him. That is the kind of situations I have reference to.

[fol. 433] Q. I understand the kind of situation. My question was whether that type of case falls within the policy of the National Defense Fund for financing attorney's fees or for costs.

A. It is my understanding that once a principle has been established as a matter of law, in other words, the legal principle has been fixed, that under those circumstances if it is simply a denial of a right of a person remedial in damages that I have a right to refuse to accept a person of that sort.

Q. If the principle has not been established, then the Legal Defense Fund will pay your attorney's fees and will pay the costs of a suit by a private litigant to recover damages for violation of civil rights?

A. That is correct, at least, that has been done in the past.

Q. And what becomes of the damages that are recovered?

A. Paid to the litigant entirely in such instances where to my knowledge damages have been recovered.

Q. Have you handled such cases?

A. Well, I was of counsel in the case of Chance v. The Atlantic Railroad Company, along with Mr. Hill, perhaps also Mr. Martin, I believe. I believe the recovery of \$50 was effected in that case and so far as I know if it got paid it got paid to Mr. Chance. I think I can say, in answer to the question, Mr. Gravatt, that there has never been a situation that I have been connected with where a party has effected a recovery and any part of that recovery was paid to Legal Defense and Educational Fund.

Q. You are aware, Mr. Robinson, of the provision of your charter, or the charter of the Legal Defense and Educational Fund as to the very first statement of the purposes of the corporation?

A. Well, there are several purposes that are enumerated in the certificate of incorporation. I am not certain about it.

Q. May I call your attention to this one?

A. Certainly, I wish you would.

Q. "The Corporation is, to be formed for the following purposes:—"

(A document was handed the witness.)

Mr. Gravatt: Yes, by all means.

[fol. 434] Q. (Continuing) "(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof who are suffering legal injustice by reason of race and color and unable to employ and engage legal aid and assistance on account of poverty."

Have you been aware of that provision in the charter of the Defense Fund Corporation?

A. Yes, I have, but I have tried, as I have already testified—I have tried to keep my activities within the scope of this provision.

Q. But you have stated that you did not feel it was incumbent upon you to do more than to make the casual observation that you would make of any kind coming into an attorney's office for the purpose of ascertaining whether or not you were complying with that provision of your charter.

Mr. Marshall: May it please the Court, we object to this argument with the witness, even though he is one of the lawyers. I think the same testimony has been gone over and over again and we are now at the point of argument. I think sometime it ought to stop.

Judge Soper: It may be, but I think a certain amount of cross-examination may be allowed.

By Mr. Gravatt:

Q. In the light of that provision of your charter and with it before you, do you still insist, Mr. Robinson, that you did not feel and have not made any investigation to determine whether or not persons whom you have represented could afford litigation on account of poverty?

A. Not beyond the extent to which I have already testified.

Q. And that simply was, you said, I believe, that you

made the ordinary observation of them that you would make of any person coming into your office?

A. Considering the type of thing that I was asked to do. I would know, for example, that if I were being asked to engage in a suit that would seek to remove the practice of racial segregation from a public school system in Virginia, that it would take a person of very substantial means to conduct that litigation all by himself.

[fol. 435] Q. The testimony has been here that such legislation might cost as much, I believe, as 150 or 200 thousand dollars. Now, the principle having been established in the May 17, 1954, decision of the Supreme Court of the United States, no such tremendous amount of money as that is involved in merely filing a petition asking the Court to enjoin a school board—

Judge Soper: That has been already conceded, I think.

Mr. Gravatt: Yes, sir. Well, I want to find out from him. The other man did not know; he was assuming.

Judge Soper: He gave you some figures before, some two or three thousand dollars, something like that, it was likely to cost.

Mr. Gravatt: He said he didn't know, and I want to find out from Mr. Robinson what his opinion is.

By Judge Soper:

Q. Well, do you know what those cases cost?

A. No, Your Honor, except in a general way. I would accept Mr. Marshall's estimate. But in all the school cases I have participated in since 1951 in Virginia, with the exception of the Prince Edward case, they have been cases that I have gotten into on the request of the attorneys who had already been engaged by those parties and, consequently, just what the expenses amounted to and what they were charging, and that type of thing, were considerations that had nothing to do with my activities in behalf of the Legal Defense, and I have no real familiarity with the cost of those cases.

By Mr. Gravatt:

Q. Well, whether an attorney employs you or whether you are employed by a private litigant, you are still working in behalf of a non-profit charitable corporation?

A. No, sir.

Q. Sir?

A. No, sir. If I am requested by a private individual to represent that private individual, I consider that private individual my client in whatever I do, and not the Legal Defense and Educational Fund that pays me a retainer, and if I am requested by an attorney for Client A to associate with that attorney in the representation of Client A, I consider that my obligation is to represent Client A and not Legal Defense and Educational Fund. I think it is fair to say that I am, first, the attorney for the litigants who are involved.

Q. But however it may be, your services are being paid for by Legal Defense Fund, Incorporated?

A. That is correct.

Q. And being paid for on the basis that the litigant that you are representing is not able to pay for his own services?

A. On the basis that I would not accept the responsibility of representing that client if it appeared to me that that client were able to pay for his own legal services.

Q. Now, you are presently associated in which of the cases in Virginia?

A. I am presently in the case in Arlington County, the case in Charlottesville, the case in Newport News, the case in Norfolk, and the case involving Prince Edward County. I think they are all.

Q. Have you made any investigation of any of the litigants in any of those cases to ascertain whether or not they are able to pay their own financial expenses?

A. No, sir, not beyond what I have already said, and for the reason that I have already undertaken to give you, Mr. Gravatt: that the very nature of the case is such that it would certainly appear to me from a reasonable viewpoint that unless there is a person of considerable wealth, that person would not be able to handle these cases alone without financial assistance of some sort.



Q. If you examined the records in the City of Newport News and found that one of the clients whom you represent in that case owned real estate having a market value in excess of \$40,000, would you consider that that person was a proper person for you to represent under the charter provision of the Legal Defense Fund?

A. Well, I might say, Mr. Gravatt, that, of course, I did not make that kind of an investigation of any of the [fol. 437] litigants in Newport News. To further answer your question, I think that I would have to know more about the particular individual in order to formulate a judgment of the kind that you asked me for. All the real estate that you mention might be completely mortgaged. I don't know.

Q. Well, if it were not mortgaged and no judgments against it?

A. Mr. Gravatt, I don't think I can say more than, as a matter of what has happened in the past, on the basis of what I have done, than I have already said. The only thing that I could do would be to express an opinion on the situation on the hypothetical questions that you are asking me, predicated on facts that I don't know anything about.

Q. Mr. Robinson—and I don't mean to argue when I say this—one of the allegations in this case is that this legislation will work a hardship on people who otherwise might not be able to protect their interests.

A. Yes.

Q. And I think it is important that we should know something about the people that you are representing at the present time from that point of view in connection with your case.

Judge Soper: Now, what is the question?

Mr. Gravatt: The question is: If he examined the land books in the City of Newport News and found a public record that one of the litigants owned real estate of a market value in excess of \$40,000; another owned real estate the market value of which is in excess of \$14,000; another one owned real estate and two automobiles, one of which was an Oldsmobile and the other a Cadillac, and having



real estate valued in excess of \$58,000; another owned real estate valued in excess of \$21,000 and owned a Chrysler and a Mercury automobile; another owned real estate valued in excess of \$35,000 and owned a Buick automobile and two trucks; and another owned real estate valued in excess of \$27,000 and five motor vehicles, three Chevrolets, a Pontiac, and a Chevrolet station wagon—if he had that information, would he consider that those persons were [fol. 438] persons whom he could represent and for whom the Defense Fund could pay legal expenses and finance litigation on the ground of poverty.

Judge Hoffman: In a class action?

Mr. Gravatt: Yes, sir.

A. Mr. Gravatt, so long as it appeared to me that there were persons who were involved in the litigation—let me put it this way: So far as it would appear that there were parties involved in the litigation who could not afford that litigation themselves, irrespective of the financial position of other parties to the suit, I believe that I would still undertake to represent the parties plaintiff in the litigation. Now, as I said before, you understand, the facts that you mention may be entirely correct. All I can say is that I do not know them to be correct. They were not at hand so far as my own knowledge was concerned at the time that I decided to enter the cases. Considering the cost of litigation of that kind and assuming, as I am forced to assume, that there were parties there who could not afford to pay for the case themselves, then I feel that I was justified in entering the case at the request of attorneys who were engaged to represent those parties.

Q. Have you ever at any time had a personal conference with the clients whom you represent in that case?

A. In the Newport News case?

Q. Yes.

A. No, I have not. I have had occasion to talk to several parties who are plaintiffs to the case, but talking to the entire body of plaintiffs, I did not. My communications in that case have been in all substantial respects with Mr. W. Hale Thompson and Mr. Philip S. Walker, who were engaged by the people to represent them.

Q. Do you, in the course of these lawsuits, some of which, certainly the Prince Edward case, has now endured for going on six years, I believe—

A. Since 1951.

Q. Isn't that right?

A. That is correct.

Q. Do you make either verbal or written periodic reports to the clients and litigants whom you represent?

[fol. 439] A. Yes: I do not think that there have been any written reports, none that I recall, made to the clients in the Prince Edward case, but from time to time while the case has been pending we have gone back to Prince Edward County, we have notified our clients of our coming—when I say “we” I am referring to Mr. Hill and myself—we have had occasion to sit down and talk to these people, advise them of the status of the case, and from time to time tried to ascertain their desires with respect to the case, discussed with them the plans that we had for future activities in connection with the case. That has occurred from time to time while the cases have been pending. There was a long interval of time, Mr. Gravatt, during which it was not necessary to do it, because from 1952 until 1954 the cases were in the Supreme Court. But there have been several occasions upon which Mr. Hill and I have made an effort to keep our clients up to date, notwithstanding the fact that there has been full publicity about it, and to discuss the problem of our clients. We would notify them, we would suggest a meeting, we would go and talk to those who were there and, of course, we would formulate our plans accordingly.

Mr. Gravatt: You may inquire.

Mr. Marshall: May it please the Court, I think I have no choice except to proceed at this stage as one of the attorneys for the defense, since Mr. Robinson and I are the only two lawyers here, so I will have to ask the questions.

Judge Soper: Very well. Go ahead.

## Cross-examination.

By Mr. Marshall:

Q. Mr. Robinson, are all of these segregation cases in Virginia class action cases?

A. So far as I can recall, they all are.

Q. And so far back as you can remember?

A. I believe that is correct.

Q. When you estimate before a case is coming up, or consider it, in estimating the possible cost of litigation and [fol. 440] what you are up against, do you look to all of the resources of the party you are about to sue?

A. No.

Q. Do you take that into account in estimating the cost of the case?

A. Of course, in all instances, Mr. Marshall, the defendant, without exception so far as I can recall, of the suit that was just filed here in Richmond—the defendants have been the city or county school boards and the division superintendents, and, of course, I knew as a matter of fact that those bodies as public bodies had financial resources of their own that could be used in defending other parties.

Q. For example, in the Prince Edward case there is another party involved?

A. The Commonwealth of Virginia, in the Prince Edward school case—and while I have not acted on the information contained in the public press, the Commonwealth of Virginia, through the office of the Attorney General, said it would be able to lend assistance to the communities finding themselves confronted with litigation to the end of racial segregation in schools.

Q. Is that also true of the Arlington, Charlottesville, and Newport News cases?

A. That is correct.

By Judge Hoffman:

Q. If the principle of desegregation in the public school system should be accepted as such, what would you view your individual responsibilities in connection with the De-

fense Fund to be where a parent of a child is financially able to employ his or her own counsel?

A. I think, Judge Hoffman, that I would take about the same position that I have indicated in answer to one of Mr. Gravatt's questions, that I have had occasion to take in the past with respect to the field of transportation: Once a principle becomes accepted and the issue as to whether a child should be admitted to this school or that school becomes an issue that can be litigated in an inexpensive fashion and the request is made to me for services and the request comes from a parent who appears able to take care [fol. 441] of that service, I believe that—well, my present opinion would be that I simply wouldn't undertake to represent the parent in that activity.

#### COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Mays: If Your Honor please, you will remember from the pretrial conference that the plaintiff was to take, we understood, three days for the presentation of the case, and we have summoned our witnesses beginning tomorrow morning. The plaintiff, however, has elected not to put on some of the evidence they had intended to and, therefore, we come close to the end of the day and we are not prepared to go forward, of course, with the witnesses we have summoned. We hope you will indulge us in that until tomorrow.

And may I make this inquiry of the Court: You will recall at the outset yesterday that the exhibits that were attached to the bill were offered, I believe, in evidence. In connection with the pretrial conference, it was agreed that authentication would not be required, but we reserved the right to object on the ground of admissibility, and at the time they were brought to the Court's attention on yesterday, Your Honor, Judge Soper, stated that the question of admissibility in these things is reserved, to which I agreed. We had no argument as of that time, and I am merely inquiring now whether it will be proper for us to make that argument in our brief, or whether the Court wanted that argument independently?

Judge Soper: It seems to me that is one of the general questions. I defer to my colleagues, of course, but it would

seem on the face of it to be one of the general questions that you would like to brief.

Mr. Mays: I would be happy to.

(There followed a discussion off the record.)

Judge Soper: In connection with what you stated a moment ago about the admission of those various exhibits, that happens to throw some light on the legislative history of the thing.

Mr. Mays: Definitely.

[fol. 442] Judge Soper: That is a matter, of course, that we would like to have argued and briefed.

That reminds me again of the question of admissibility of these newspaper articles, and I repeat the request that I made of counsel. I do not see why that could not be put into our hands tomorrow, not as a binding thing and not as an argument, but just as a statement as to what purposes those articles are offered for. It may be that tomorrow or on Thursday we shall have some time to talk about the various questions that we want briefed and make arrangements for the argument, and all that sort of thing, but I should like to have counsel consider this for the convenience of all of us in connection with the argument and the filing of the briefs:

Judge Hutcheson has a number of engagements, one of which will take him out of the state. I shall be down here in attendance on the Court of Appeals beginning the 7th of October, and I would like you to consider whether or not it would be possible to get the briefs in before that date, so that we may have the argument on some day later in the week beginning Monday, October 7. That will give you something over two weeks. In other words, I do not ask for an immediate response on either side, but think that over.

We will adjourn until tomorrow morning. Would it be worthwhile, Gentlemen, to meet a bit earlier, so you will be sure to get through in time, or is that necessary?

Mr. Mays: I don't think it is necessary.

Judge Soper: We will meet at the usual time, ten o'clock tomorrow.

Adjourn the court until tomorrow morning at ten o'clock.

(Thereupon, an adjournment was taken until the following morning at ten o'clock.)

September 18, 1957

The court reconvened at 10:00 a. m.

Appearances: As previously noted.

Judge Soper: You may proceed, Gentlemen.

Mr. Gravatt: I would like to call Leonard R. Bland.

[fol. 443] LEONARD R. BLAND, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. You are Leonard R. Bland?

A. Yes, sir.

Q. Where do you live, Leonard?

A. I live in Prince Edward County, State of Virginia—Prince Edward County.

Q. What is your occupation?

A. Railroad man.

Q. You are one of the plaintiffs in a suit that was instituted against the School Board of Prince Edward County. Will you state how you became a plaintiff in that suit?

A. Well, how the beginning was, the children was on a school strike. I had children in the school at the time—

Judge Soper: I can't hear him.

Will you talk this way, please. Begin again.

A. (Continuing) At the time this thing happened, the children was out on a school strike. Well, the parents called a meeting at the school in order to see what could be done to get the children back in school.

By Mr. Gravatt:

Q. Was there anything said at that meeting in regard to the institution of a lawsuit?



A. Not at the school—the meeting we had at the school. The first meeting was at the R. R. Morton High School.

Q. Did you later attend another meeting?

A. I attended another meeting at the church, at the Baptist Church.

Q. Who called that meeting?

A. I don't know, sir, who called it.

Q. Who spoke at the meeting?

A. It was a lot of speaking at the meeting. It is hard to determine just what individual did speak. There was a lot of speaking being done.

[Vol. 44] Q. Was Mr. Hill present at the meeting?

A. I am not for sure, but I think Mr. Oliver Hill was there. I think Mr. Oliver Hill was there.

Q. Was Mr. Spottswood Robinson present at the meeting?

A. If he was, I don't know. I didn't know him then. He could have been there and I didn't know who he was.

Q. Did you employ Mr. Oliver Hill or Mr. Spottswood Robinson to represent you in the institution of a suit for the integration of schools in Prince Edward County?

A. You mean, did I employ him personally?

Q. Yes.

A. No, sir, not me individually.

Q. When was the first time you knew you were a plaintiff in that suit?

A. I thought it was all settled, after the length of time, until the Boatwright Committee visited my home.

Q. Do you know when that was?

A. No, sir, I don't know just exactly what date it was. It has been a right good while ago.

Q. Was it within the last year?

A. Oh, yes; yes, sir.

Q. Was that the first time that you knew that you were a plaintiff or a party to the lawsuit against Prince Edward County?

A. That was the first time I could remember anything about it, because, as I said a while ago, I thought it was through with until the Boatwright Committee visited me.

Q. Were you interested in participating in a suit to bring

about the mixing of the races in the public schools of Prince Edward County?

A. I am unprepared at this time to answer that.

Q. What do you mean by that, Leonard? Be frank and explain yourself.

A. I don't exactly understand the statement you made. I don't exactly understand it.

Q. You don't understand the statement I made?

A. No, I don't understand it.

Q. Did you ever intend, or would you have been a party to a lawsuit to compel the mixing of the white and colored children in the public schools of Prince Edward County? [fol. 445] A. So long as the colored people got the same school, the same opportunities, the same facilities, and the same education—if they get that, I don't see what profit it would be to sit side by side in the school.

Q. Have you ever had any written or oral communication during the course of the litigation from either Mr. Hill or Mr. Robinson?

A. No, sir, not me individually; no, sir.

Q. Have they ever discussed this matter with you at any time?

A. No, sir.

Q. Have you ever received any notice of any opportunity to discuss it with them?

A. From them gentlemen?

Q. Yes.

A. No, sir.

Q. Have you had any harassment, criticism, or economic reprisals visited upon you as a result of your participation in that lawsuit?

A. From who?

Q. From anybody?

A. No, sir.

Q. Have your relations with the white people in Prince Edward County been the same since that suit was instituted as they were prior to that time?

A. So far, it has been the same.

Mr. Gravatt: That is all. Keep your seat. They may want to examine you and ask some questions.

## Cross examination.

By Mr. Robinson:

Q. Mr. Bland, do you recall on what day of the week the student strike at the Morton High School began, whether it was Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday?

A. No, sir, I don't. I don't know what date it would be.

Judge Soper: I think he is talking to himself, as far as I am concerned.

[fol. 446] A. (Continuing) I don't know what date it was. No, sir, I don't know what date it was—what day it was, to save my life. I just don't know.

By Mr. Robinson:

Q. Did you attend the meeting that was held in the basement of the First Baptist Church in Farmville on Wednesday of the first week that the students were out on strike?

A. No, sir.

Q. Were you present at that meeting?

A. No, sir.

Q. You have testified that you were present at two meetings?

A. That's right.

Q. When was the first of these meetings?

A. I don't know what time it was. It has been too long for me—

Q. Were the students still out on strike at the time you attended that meeting?

A. That's right, they were still out on strike at the time I attended the meeting at the R. R. Morton School.

Q. A large number of people were present at that meeting, were there not?

A. That's right, a large number of people.

Q. And there was considerable speaking at that meeting; isn't that so?

A. Yes, sir.

Q. Wasn't one of the things discussed at this meeting a lawsuit to seek an end to racial segregation in the public

schools of Prince Edward County—at that very meeting?

A. I don't remember that.

Q. Did you stay all the way through the whole meeting?

A. No, I didn't stay all the way through.

Q. When was the second meeting that you attended?

A. At the First Baptist Church in Farmville, on Main Street.

Q. All right. The students were still out on strike at the time that the meeting was held and you say you know Mr. Oliver W. Hill?

A. Yes, sir.

[fol. 447] Q. Don't you remember Mr. Hill speaking at that meeting?

A. Yes, I remember Mr. Hill speaking. That is why I say I knew him.

Q. Do you know my name?

A. I know it now, I didn't know it then.

Q. What is my name?

A. Mr. Spotswood W. Robinson.

Q. Don't you remember, since seeing me, of my speaking at that meeting?

A. Yes, sir.

Q. Of course you know Reverend Griffin?

A. Yes, sir.

Q. And you know Lester Banks?

A. Yes, sir.

Q. And you know Reverend Griffin?

A. Who was the first Griffin?

Q. L. Francis Griffin, Pastor of that Church.

A. Yes, sir.

Q. Don't you remember him speaking also?

A. I can't remember him. I can't remember him. As I said a while ago, so much speaking was done it is hard to know just who everybody was.

Q. Do you remember a Miss Barbara Johns, one of the students out on strike?

A. Very well.

Q. Don't you remember her speaking.

A. Yes, sir.

Q. Mr. Bland, did you stay all the way through this meeting or did you just hear part of this meeting?

A. I stayed all the way through that meeting.

Q. You mean to say that you didn't hear discussed at that meeting, not briefly but all of the way through the entire meeting, the matter of the filing of a suit to end racial segregation in the public schools of Prince Edward County?

A. I don't remember the discussion, Mr. Robinson, of what was discussed but—

Q. Finish your answer.

A. Go ahead.

Q. Had you finished?

[fol. 448] A. What I started to say, I do remember this, whatever was said was on the paper that I signed. I remember that.

Q. What was talked about at this meeting that wasn't on this paper that you signed?

A. Well, it was so much that was talked about, it is hard to tell just exactly.

Q. Do you remember what it was?

A. The talk was in regard to the school. I know that.

Q. Can you remember just what the nature of the talk about the schools was? Can you remember that?

A. Not too much of it, no, sir.

Q. Do you remember any of it, Mr. Bland?

A. I know it was spoke about getting a school and about the opportunities, and so forth like that, but to come right down—I was sworn in to tell the truth, but to tell exactly what was said in this meeting, I am afraid to take a chance and try to tell. That has been in 1954.

Q. You just don't remember?

A. I don't remember.

Q. You said 1954?

A. Wasn't it in 1954?

Q. Wasn't it 1951?

A. I don't know, I thought it was '54. Whenever the school strike was.

Q. You don't remember when it was?

A. Whenever the school strike. I remember they had a school strike.

Q. You spoke about a paper that you signed; you signed the paper that had to do with the school situation in Prince Edward County; isn't that correct?

A. Yes, sir, that's correct.

Mr. Robinson: If the Court please, this may be a little unusual, but I would like to terminate my cross examination of this witness until I can get my file from my office in the courtroom on the Prince Edward County school case. I want to question him about the paper about which he has given testimony.

Judge Soper: Very well.

Mr. Gravatt: You may stand aside.

Judge Soper: Do you want the witness to stay in attendance on court?

[fol. 449] Mr. Robinson: Yes, Your Honor.

Judge Soper: Do you want him to stay in the courtroom or outside?

Mr. Robinson: I guess perhaps, if Your Honor please, it would be better to have him wait outside.

Judge Soper: Very well.

---

ALMA R. RANDLE, called as a witness by the plaintiffs, being duly affirmed in behalf of the defendants, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Alma R. Randle, I believe?

A. That is right.

Q. Where do you live, Alma?

A. Prince Edward County.

Q. You are one of the plaintiffs in the suit that was instituted against the School Board of Prince Edward County; is that correct?

A. I found that out about six months ago.

Q. Will you state whether or not you have ever authorized Mr. Oliver Hill or Mr. Spotswood Robinson to institute a suit for the integration of the public schools of Prince Edward County on your behalf?

A. All right. I work from 4 until 12. So we had a paper came from the school after this Prince Edward R. R. Mor-



ton School strike. This paper that my—my daughter told me that this paper was to sign for a better school because our children was out of school. I signed that paper, laying in my bed.

By Judge Soper:

C You did what?

A. I signed that paper laying in my bed for a better school.

Q. For a better schools in Prince Edward County because we didn't have any school worthwhile.

[fol. 450] By Mr. Gravatt:

Q. Did you understand at the time that you signed the paper that it had anything to do with bringing a lawsuit?

A. I didn't have any idea it was going to bring any lawsuit.

Q. Would you have signed any paper if you had understood that what you were being asked to do, which was to bring about the mixing of the white and the colored children in the public schools of Prince Edward County?

A. No, I didn't know it was going to bring about the mixing of schools.

Q. Have you ever had any conversation with Mr. Oliver Hill or Mr. Spotswood Robinson?

A. I do not know Mr. Oliver Hill or Mr. Spotswood Robinson.

Q. Have you ever had any report from them with respect to any litigation that they were conducting in your name?

A. No more than what the school children bring me.

Q. What did the school children bring you?

A. No more than what I heard the people in meetings and what the school children bring me.

Q. You never had any contact with them at all?

A. No, sir.

Q. When did you first learn that you were one of the parties in whose name that suit had been instituted?

A. Well, I reckon it has been about six months ago—well, this summer some men from somewhere out of the blue came there and was telling me about it, asking me questions about it.

Q. Did you know at that time that you were a party to a lawsuit against the School Board of Prince Edward County?

A. No, I didn't.

Q. Alma, have you at any time since this suit was instituted experienced any mistreatment from any white people in Prince Edward County?

A. Well, Lawyer Gravatt, no, I hadn't had any mistreatment because I reckon they just knowed I wout going to take it so they didn't give it to me.

Q. Had your relations in the community been the same since this suit was brought as they were before?

[fol. 451] A. Mine have.

Mr. Gravatt: You may examine.

Cross examination.

By Mr. Robinson:

Q. Mrs. Randle, did you attend any meetings concerning the school situation in Prince Edward County during the time that the High School students at the Morton School were out on strike?

A. The onliest meeting I attended was at the Baptist Church.

Q. Wasn't this a meeting that was held during the time that the school children, all of them at the Morton High School, were out on strike?

A. They all were out on strike.

Q. A very large meeting was held at the First Baptist Church in Farmville?

A. That's right.

Q. Do you remember seeing me at that meeting?

A. I do not.

Q. Do you know Reverend L. Francis Griffin who is pastor of that church?

A. I know him personally because he was one of my personal friends.

Q. Was he at that meeting?

A. Yes, he was.

Q. Did you hear him have anything to say at that meeting?

A. Yes, Mr. Griffin talked.

Q. And you still don't remember ~~me~~ saying anything at that meeting?

A. I don't remember you saying anything.

Q. Do you remember Miss Barbara Johns, who was one of the students out on strike?

A. I know her personally.

Q. You knew her quite well, didn't you?

A. Yes, sir.

Q. And you heard her speak at this meeting also?

A. I heard her speak at the Baptist Church.

[fol. 452] Q. Wasn't the meeting called for the purpose of talking about the school situation?

A. That's right.

Q. That is all that was talked about at that meeting; isn't that so?

A. Yes, the school situation, but they didn't say mixing of schools, they said a better school, is what I understood. So I am not educated like you all and I didn't know about the non-segregated school. But we was fighting for a better school.

Q. Do you mean to say that during the course of this meeting you did not hear discussed, all of the way through that meeting, the matter of seeking opportunities in the schools of Prince Edward County on a non-segregated basis? You didn't understand that from the meeting that you attended?

A. No, I did not.

Q. Did you stay all of the way through this meeting, Mrs. Randle?

A. I wasn't there when it began and I wasn't there when it ended.

Q. How long did you stay at this meeting? It must have been for a short space of time, wasn't it?

A. I know I was there over a half an hour.

Q. Over a half an hour?

A. Yes, sir.

Q. What went on while you were there?

A. Whilst I was there it was a Professor Banks talked and a Mr. Griffin and a Miss Barbara Johns.

Q. And that is all that you heard about this meeting?

A. Yes, sir, and then different parents.

Q. Didn't you attend some other meetings, Mrs. Randle, about this matter?

A. No, I did not.

Q. You didn't get to a meeting that was held in the basement of the First Baptist Church on this same day or on the same evening of the meeting to which you have testified, but before the big meeting got under way? Did you attend that meeting?

A. No, I did not.

[fol. 453] Q. Didn't you receive through the mail a notice requesting you to be present at a meeting to be held in the basement of the church prior to that time?

A. No, I did not.

Q. You deny that also?

A. Yes, sir.

Q. What is your employment, Mrs. Randle?

A. Right now, I am a housewife, but at that time I was working at the Berksville Veneer Shop as a furniture polisher, Berksville, Virginia.

Q. You read the newspapers, Mrs. Randle?

A. Sometimes when I find time.

Q. Were you reading the newspapers in 1951 when the Prince Edward School case was filed?

A. I guess I did, but I couldn't remember everything I read.

Q. Do you remember at any time reading anything about a suit being filed to end segregation in the public schools of Prince Edward County?

A. I may have read it.

Q. Don't you remember whether you did or didn't?

A. I may have read it, but I didn't know my name was in there, I didn't see my own name.

Q. Did you read about it? Did you understand from reading the newspapers that a suit had been filed to end segregated schools in Prince Edward County?

A. Yes, I read that.

Q. You read that in the newspapers?

A. Yes, sir.

Q. And there was a lot of publicity about this in 1951 when the children were out on strike; isn't that so?

A. Yes, sir.

Q. There had been publicity about the strike before you signed this paper that you had referred to; isn't that so?

A. When I signed that paper, the children were out on strike, I reckon, about two weeks.

Q. About two or three weeks?

A. Yes, sir.

Q. And you actually signed this paper, didn't you, after this meeting that you had given testimony to? In other words, you signed the paper—

[fol. 454] A. I signed the paper when the kids brought it home from school.

Q. You stated you have not had any trouble with any of the people in Prince Edward County; you have not been harassed or you have not been annoyed or you have not been bothered to any extent since the school matter first arose in Prince Edward County?

A. No, sir, I haven't.

Q. You don't believe in unsegregated schools, do you, Mrs. Randle?

A. Well, I believe just this: If it passes for them to go together, it is all right with me, and if it don't, it is all right, but I wouldn't want to stay in the home with my husband if he didn't want me in there.

Judge Soper: I could not understand what she said.

A. (Continuing) I said, if it was passed for them to go together, it would be all right with me, but if they didn't want them to go together—I can speak for myself, I don't have any children in high school now, all of mine is finished—but I said if my husband didn't want me to stay in the home with him, I wouldn't want to be in there with him.

By Mr. Robinson:

Q. Let's get back to '51. Just how many children did you have attending the schools of Prince Edward County?

A. I had five graduated from R. R. Morton.

Q. How many did you have in the schools when the strike occurred?

A. I had three there, two daughters and one son.

Q. Did you want them to have a non-segregated school education in 1951 when the strike occurred?

A. It was left to the children.

Q. Well, you had the same opinion in 1951 about segregated schools that you have now; is that correct?

A. I have the same opinion. It is left to them now.

Q. You have expressed your opinion on this matter to your friends and associates in Prince Edward County, have you not?

A. Yes, we have talked about it.

Q. Were you employed at the time this suit was filed?

A. Employed as what?

[fol. 455] Q. Where you working for someone else at that time?

A. Yes, sir.

Q. Did you talk this matter over with your employer at that time?

A. Yes, we did.

Q. And you expressed to your employer about the same opinion about segregated schools that you have expressed here?

A. Well, the young people on both sides think it is all right. They don't pay any attention to it.

Mr. Robinson: If Your Honor please, I am afraid I am going to have to ask the Court to indulge me with respect to this witness as with respect to the other witnesses. I would like the Court to indulge me just a few minutes to call my office to send me the part of the Prince Edward file I need. It is a very large file and if I do not explain it to the office, I don't think I will get the part I want.

Judge Soper: Certainly, Mr. Robinson. A great deal has been said—or I don't know that a great deal has been said, but the case has been mentioned from time to time during the taking of the testimony here and certainly dates have been mentioned during the examination of these witnesses. It might clarify the record if there could be a statement as to just when the case was instituted and what it was about and the various steps in the litigation, so that the record would show at some place what we are talking about when we are talking about the Prince Edward suit. That can be done at your convenience.

Mr. Gravatt: May it please the Court, Mr. Robinson



is more familiar with it than I am. If he can prepare a statement, we can stipulate to it.

Judge Soper: So many of these cases will come up from time to time, we are likely to overlook it unless somebody puts it down. Would you like for us to suspend so you can use the telephone?

Mr. Robinson: I think, in order to expedite the matter, maybe Mr. Marshall and Mr. Carter could take over and I will do my telephoning and see if I can get what I need.

Judge Soper: All right.

Judge Hoffman: May I ask the witness a question?

[fol. 456] By Judge Hoffman:

Q: Did you read the paper that they brought to you?

A: No, I never read it, because she just told me—said, "Mother, we have a paper came from the P.T.A. meeting," and I said, "What is it for?" She said, "You or Daddy, one, will have to sign it because it is for better schools."

Judge Soper: Is there any further examination of this witness at this time?

Mr. Gravatt: No, sir, I have no further examination.

Judge Soper: You want to have the witness wait?

Mr. Robinson: Yes, sir.

The Court: Very well. Have the witness wait. Let us call another witness.

Mr. Gravatt: Maude Walker.

---

MAUDE E. WALKER, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q: Your name is Maude Walker?

A: Yes, it is.

Q: Where do you live, please?

A: Well, my mailing address is Farmville.

Q: You are one of the plaintiffs in the suit that was instituted against the School Board in Prince Edward County, are you not?

A. Well, I haven't given nobody permission for no suit.

Q. Have you ever authorized any attorney to represent you in a lawsuit against the School Board in Prince Edward?

A. No, I haven't.

Q. When was the first time that you found out that you were one of the plaintiffs in that suit?

A. Well, it was—I don't know what day, but it was two men from the School Board, they told me, from Richmond.

Q. The Boatwright Committee?

[fol. 457] A. It was two men; I don't know what the name—

Q. They came and talked to you about it?

A. Yes, sir.

Q. Has it been since last fall?

A. I think it was June; I am not sure.

Q. And that was the first time that you knew that you were a participant in litigation against the School Board in Prince Edward?

A. Yes, that is what they told me.

Q. Maude, would you have authorized in your name a suit against the School Board for the purpose of mixing the white and colored children in the public schools of Prince Edward?

A. No, I wouldn't.

Q. Have you ever had any conversation with Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, I haven't.

Q. Have you ever had any written communication from those two attorneys?

A. No, I haven't.

Q. Have you ever been advised by anybody with respect to the progress and the course of that litigation—that lawsuit?

A. No, I haven't been in touch with no one.

Q. Have you had anyone in Prince Edward County, especially white people, to mistreat you in any way because of your connection with this lawsuit?

A. No, I haven't.

Q. Have you noticed any difference whatever in your relations with the people in the County since the suit was

brought, as compared to your relations with the people there before the suit was brought?

A. No, I haven't.

Mr. Gravatt: You may examine the witness.

Cross examination.

By Mr. Marshall:

Q. Mrs. Walker, have you attended any meetings, in Farmville concerning the school strike at the Morton School?

[fol. 458] A. One or two, when the children first left the school.

Q. You attended them?

A. One or two.

Q. Did you attend the one at the Baptist Church?

A. I think one of them.

Q. The one where Reverend Griffin spoke?

A. I don't know whether it was Reverend Griffin or who spoke there.

Q. Was Mr. Hill at that meeting?

A. I don't remember that.

Q. Do you remember anybody who was at the meeting?

A. I know once Mr. Robinson— I think it was Mr. Robinson— spoke.

Q. You were at the meeting?

A. One of them.

Q. What was discussed at that meeting?

A. Oh, I don't know.

Q. Did they discuss the question of the schools?

A. Well, they talked about better schools.

Q. Did they talk about non-segregated schools?

A. I don't remember.

Q. The first you knew you were a plaintiff in this lawsuit was a few months ago?

A. It was when those two men— they said they was from the Richmond School Board.

Q. What did they tell you?

A. Well, they asked me if I knew I was plaintiff, or whatever you all call it.

Q. And you didn't know it?

A. No, I didn't know anything about it.

Q. And you did not know what purpose they were there for?

A. Until they told me.

Q. Then what did you tell them?

A. Well, I answered their questions the best I could.

Q. About the lawsuit?

A. They asked me did I want better schools, or was I for integration—I think that is what they asked me, along that line—and I told them no.

Q. You told them no? What do you mean by "no"? That you did not want integration?

[fol. 459] A. I was satisfied with the school we had.

Q. And you told everybody around Prince Edward County where you would go that you were satisfied with the schools?

A. Nobody asked me.

Q. Did you tell your employer that you were satisfied with the schools?

A. I didn't have an employer; I am a housewife.

Q. Did you tell your friends you were satisfied with them?

A. I told my friends I was satisfied with the school.

Q. You told people in general that, didn't you?

A. Yes, I told people in general.

Q. The point is, you did make it clear that you were not for desegregated schools?

A. I am satisfied with the school we have.

Q. Mrs. Walker, the point is, did you let people know that?

A. Well, I haven't been out discussing the schools with nobody.

Q. When was this case filed? Do you remember that?

A. No, I don't.

Q. Was it in the newspapers?

A. I don't take a newspaper.

Q. Do you read the newspapers?

A. Seldom.

Q. Did you ever read anything in there about this lawsuit?

A. I don't remember.

Q. Well, when did you first know that there was a lawsuit attacking segregation in the public schools of Prince Edward County?

A. Well, I have heard it in the news.

Q. About when did you first hear it?

A. I couldn't tell you that, because I don't remember.

Q. Was it in '51?

A. I told you I couldn't tell you that because I don't remember.

Q. Well, you did know before these gentlemen talked to you that there had been a lawsuit filed attacking segregation in Prince Edward County?

[fol. 460] A. I heard it in the news.

Q. Did you know at that time that you were one of the plaintiffs?

A. No, I didn't.

Q. Did you ever sign any paper?

A. I signed a paper, so the child told me—I had forgotten it until those two men came around and she told me about it. That was for better schools.

Q. That was your daughter?

A. Yes, my daughter.

Q. Did you read it?

A. Yes, but it wasn't but two lines, or two lines and a piece.

Q. What did it say?

A. I couldn't tell you word for word. It was for better schools.

Q. Did it say anything about a lawsuit?

A. I don't remember anything about a lawsuit.

Q. Did it say anything about a lawyer?

A. I don't remember.

Q. Did it have any lawyers' names on it?

A. I don't remember.

Q. Are you in the habit of signing papers without reading them?

A. Well, my children were at the school and that was for better schools.

Q. And you did not read what was on it?

A. Yes, but I don't remember what was on it.

Q. Did you make any effort to find out whether it involved lawyers?

A. No, I didn't.

Q. Have you ever received any notice from these lawyers about a meeting?

A. No, no more than when the school first struck.

Q. Did you receive any notice?

A. I got one letter.

Q. Have you received any notice about an NAACP meeting in the county?

A. I don't remember any.

Mr. Marshall: Nothing further at this time, if Your Honor please. May we have her under the same rule? [fol. 461] Judge Soper: You want her to remain? Let her remain out in the hall.

SARAH ELIZABETH HICKS, called as a witness on behalf of the defendants, being duly affirmed, testified as follows:

### Direct examination.

By Mr. Gravatt:

Q. You are Sarah Elizabeth Hicks, are you not?

A. That's right.

Q. Where do you live?

A. I live about three miles from Rice.

Q. Is that in Prince Edward County?

A. Yes, sir.

Q. Did you know that you were one of the plaintiffs in a suit filed against the School Board in Prince Edward County for the purpose of compelling the mixing of the white and Negro races in the public schools of the County?

A. No, I didn't know that.

Q. Have you at any time authorized Mr. Oliver Hill or Mr. Spottswood Robinson to institute suit against the School Board of Prince Edward County on your behalf and in your name?

A. No, sir, I haven't.

Q. Have you ever had any conversation with Mr. Oliver Hill or Mr. Spottswood Robinson?



A. No, sir.

Q. Have you ever received any written communication from Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, sir.

Q. Since this suit was instituted, which was sometime in 1951, have you experienced any mistreatment at the hands of any white people in Prince Edward County?

A. Not to me.

Q. Have your relations with the people in Prince Edward County been as pleasant since this suit was instituted as they were before the suit was instituted?

A. Those I have had any dealings with.

Mr. Gravatt: You may examine.

[fol. 462] Cross examination.

By Mr. Robinson:

Q. Mrs. Hicks, you remember when all of the children at the Negro high school went out on a strike in 1951?

A. Yes, sir, I remember.

Q. They stayed out about a couple of weeks at that time, did they not?

A. I don't know how many weeks it was; I know they stayed out.

Q. Every last student in the school walked out on that strike, didn't they?

A. Yes, sir.

Q. Do you remember attending some meetings that were held in Farmville at the time these children were out on strike?

A. Yes, I attended one or two meetings, but I didn't attend them all.

Q. Do you remember as a fact that the children walked out on strike on a Monday? That was the day of the week that the strike started?

A. I don't remember.

Q. Do you remember a meeting that was held in the basement of the First Baptist Church on a Wednesday afternoon during the first week of the strike, attended by a large number of the children and by some of the parents?

A. I remember some being there.

Q. You were present at that meeting?

A. At one or two of them, I was.

Q. Do you remember being present at this particular meeting? It was held on Wednesday afternoon, about 4, 5, or 6 o'clock in the basement of the First Baptist Church?

A. Well, I just don't remember.

Q. Do you remember a meeting that was held on the Thursday night of the first week of the strike at the Morton High School?

A. Yes, sir, I remember.

Q. You were present at that meeting?

A. Yes.

[fol. 463] Q. How about another meeting that was held during the following week, I believe in the auditorium of the First Baptist Church? Were you present at that meeting?

A. No, I was not.

Q. You were not present at that meeting?

A. No.

Q. What other meeting were you present at in addition to the one that you said you attended at the Morton High School.

A. I went to one at the Baptist Church. I went several times to go to the meetings, but I never did go.

Q. You went to one at the Morton High School?

A. Yes, sir.

Q. And then you say you went to one at the Baptist Church?

A. Yes, sir.

Q. And was this during the time that the children were out on strike?

A. This one at the school was.

Q. What about the one at the Baptist Church? Was that while the children were out on strike, just a few days before they went back to school?

A. I don't remember.

Q. Was it a large meeting attended by—

A. Yes, the church was full, but this was upstairs.

Q. Upstairs. That's right. You remember little Miss Barbara Johns who was one of the students there on strike?

A. No, I don't know her.

Q. You don't know her?

A. No.

Q. You know Reverend Griffin, do you?

A. Yes, I know Reverend Griffin.

Q. Didn't Reverend Griffin have something to say at this meeting, the one at the Baptist Church?

A. Bless if I remember, I just don't remember.

Q. Do you remember seeing me there?

A. No, I didn't even know you at the time.

Q. Since you have seen me, do you remember me being there?

[fol. 464] A. Well, I just don't remember.

Q. Do you know Mr. Oliver Hill, Attorney Oliver Hill from Richmond?

A. No, I don't know him.

Q. What went on at the meeting at the First Baptist Church? What of that meeting do you remember?

A. Well, now, you have done asked me a question. I just don't remember what went on at that meeting.

Q. All right. And you don't remember what went on at the meeting over at the Morton High School, do you?

A. No.

Q. You read the newspapers, don't you, Mrs. Hicks?

A. I don't even take the newspapers.

Q. Do you read the newspapers?

A. No, sir.

Q. Do you listen to the radio?

A. Very seldom.

Q. Did you know that there was a suit that had been filed in the courts to bring about an end to racial segregation in the public schools of Prince Edward County?

A. No, I didn't know that.

Q. You didn't even know that such a suit was in court or was filed in court in 1951?

A. I heard.

Q. Tell me what is it that you did hear. Just tell me exactly what you heard.

A. I remember signing a paper for schools.

Q. No, I don't mean about the paper now. You said you heard something about something going on about the schools.

A. Yes, sir.

Q. What was it you heard?

A. I couldn't tell you what it was because I don't know.

Q. Did you ever hear that there was a case that went to the Supreme Court of the United States involving segregated education at Prince Edward County? You don't remember that either?

A. I think I remember it.

Q. I didn't hear you.

A. I think I remember that.

[fol. 465] Q. All right. Now when did you first learn about that case? When did you first hear about that case?

A. I don't know. I can't remember all them things.

Judge Soper: Did this witness have children in school?

By Mr. Robinson:

Q. You had children in the schools?

A. I had one boy.

Q. What was the name of that boy?

A. Lee Edward Hicks, Jr.

Q. The authorization or the paper that you said that you signed at one of these meetings that I asked you about?

A. Yes, I signed it at the school.

Mr. Robinson: I would like for this witness, if the Court please, to be held for further examination.

Judge Soper: Very well.

Redirect examination.

By Mr. Gravatt:

Q. Who and where did you sign this paper that you say you signed?

A. I signed it at the Morton School.

Q. What was the purpose of the paper as it was explained to you?

A. For a school.

Q. For a new school?

A. For a new school. That is what I signed it for.

Q. During this time, a new school has been built in Prince Edward County, has it not?

A. Yes, sir.

Q. That is a school for Negro children, I believe?

A. Yes, sir.

Q. Is that school satisfactory with your four children?

A. Well, so far as I know it is all right, I reckon.

Judge Soper: Step down. Let her remain outside.

Mr. Gravatt: Rose Bell Davis.

[fol. 466] ROSA BELL DAVIS, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Rosa Bell Davis?

A. That's right.

Q. Where do you live?

A. Prospect.

Q. Speak a little louder, if you please. What is your occupation?

A. Farming—housewife.

Q. Did you have children or a child in the R. R. Morton High School at the time that the children had a strike there?

A. Yes, sir! I had two children in school at that time.

Q. Did you know that you are one of the plaintiffs in a lawsuit which was instituted following that strike against the School Board of Prince Edward County for the purpose mixing white and colored children in the public schools of the county? Did you know that you were a party to that suit?

A. No, I didn't know it was going to be a lawsuit.

Judge Hutcheson: Speak a little louder, can't you?

A. (Continuing) I said, no, I didn't know it was going to be a lawsuit when I signed that paper.

By Mr. Gravatt:

Q. If you can speak a little louder so the gentlemen can hear you—

A. I didn't it was going to be a lawsuit or anything about it when I signed the paper.

Q. What paper did you sign, please, and where?

A. I don't know what paper it was. I signed the paper at the R. R. Morton High School the night that they struck for a school.

Q. What was the purpose of your signature on that paper?

[fol. 467] A. The purpose of signing the paper was for a school. Other than that—that is why I signed it, to get a school.

Q. You signed it to get a new school?

A. Yes.

Q. When did you first know that you were one of the plaintiffs or one of the people whose name this suit had been brought against the School Board in in Prince Edward? When did you first find out about that?

A. When the first lawyers came around asking us questions about it. I don't remember what month it was.

Q. Was that during this year?

A. Yes, sir.

Q. Have you ever had any oral, that is word conversation with Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, I haven't.

Q. Have you ever had any written communication from Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, I haven't.

Q. Has anybody, particularly white people, in Prince Edward County mistreated you in any way—

A. No, sir.

Q. —because of your participation in this lawsuit?

A. No, they haven't.

Q. Have your relations with people of the county been equally as pleasant since the lawsuit as they were before the suit?

A. I would think so.

Mr. Gravatt: You may examine.



## Cross examination.

By Mr. Robinson:

Q. Mrs. Davis, do you remember when 450 some children attending the Morton School walked out on strike during the spring of 1951? Do you remember when that happened?

A. Yes, I remember when it happened.

Q. And you attended the meeting that was held during the first week that those students remained out on strike, the meeting being held at the Morton High School and you were present at that meeting, were you not?

[fol. 468] A. Yes, I was.

Q. How many people were there?

A. I don't remember.

Q. You don't remember?

A. No.

Q. A large number or a small number? Do you remember that?

A. A large number.

Q. A large number, isn't that so?

A. Yes.

Q. Wasn't there a lot of speech making at this meeting?

A. Yes, sir, there was.

Q. Do you remember the names of some of the people that spoke?

A. I don't know right now whether I remember the names or not.

Q. Do you remember what they talked about at this meeting?

A. I don't know none of the exact words they said. It has been so long now I can't remember.

Q. Don't you remember, generally, what they said? Don't you remember them talking about—

A. I remember them talking about getting the new school.

Q. Don't you remember they were talking about breaking segregation in the public schools of Prince Edward County?

A. I don't remember that.

Q. Do you know Mr. W. Lester Banks, who is connected with the State Conference of the NAACP?

A. No.

Q. Do you remember anyone from the NAACP being present at this meeting and having something to say?

A. Do I remember them being at the school that night?

Q. Yes, and having something to say at this meeting?

A. I don't remember.

Q. Isn't it a fact that you don't remember very much about this meeting at all?

A. I most certainly don't.

Q. It has been so long ago that you have forgotten; isn't that the truth?

[fol. 469] A. That's right.

Q. How about another big meeting that was held during the following week in the auditorium of the First Baptist Church in Farmville? Did you attend that meeting?

A. I don't remember being any more of the meetings.

Q. Wasn't that the only meeting you attended?

A. That was the only one, at the school.

Q. It was at that meeting that you signed a paper of some sort?

A. Yes, at the school.

Q. Did you read the paper before you signed it?

A. I most certainly didn't.

Q. I didn't hear your answer.

A. No, I didn't read it.

Q. You didn't read the paper before you signed it?

A. No.

Q. Do you read the newspapers, Mrs. Davis?

A. Not very much.

Q. Do you listen to the radio?

A. Yes.

Q. I didn't hear your answer.

A. Yes, I do.

Q. Didn't you understand that a suit was filed seeking an end to racial segregation in the high schools of Prince Edward County?

A. No.

Q. You haven't heard that before?

A. I heard it when—

Q. Can you speak just a little louder? I can hardly hear you.

A. When the lawyers came around questioning me about it.

Q. When you say the lawyers, don't you mean some people who were investigating for one of the legislative committees in Virginia somewhere in the year 1957? Aren't they the people that you have been calling lawyers here this morning? They are the people that you are talking about?

A. The ones that came around to the house asking questions.

[fol. 470] Q. Asking questions. And they did that a few months ago; isn't that correct?

A. Yes.

Q. During this year?

A. Yes.

Q. And the meeting that you testified to and the paper that you signed was a meeting held and a paper signed way back in 1951 when the children were out on a strike; isn't that so?

A. Yes, sir.

Q. Before these came around this year to ask you questions, didn't you know about a case that was in the courts, including the Supreme Court of the United States, involving the matter of racial segregation in the public schools of Prince Edward County?

A. No.

Mr. Robinson: I would like for this witness also to be held.

Judge Soper: All right. Let this witness retire and remain outside. That is all.

Mr. Gravatt: Call Robert Drakeford.

ROBERT DRAKEFORD, called as a witness by the plaintiffs, being duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Robert Drakeford, is it not?

A. Yes, sir.

Q. Where is your home?

A. Charlottesville, Virginia.

Q. What is your occupation?

A. Waiter.

Q. Where?

A. Thomas Jefferson Inn.

Q. Robert, you are one of the plaintiffs in a suit instituted for the purpose of integrating the public schools in Charlottesville, are you not?

[fol. 471] A. Yes.

Q. Will you state how you became a plaintiff in that suit?

A. Well, I didn't—didn't nobody tell me anything about it. I did that on my own. I didn't see anyone and nobody didn't say anything to me about it. When I went to the meeting, I got in there they were setting around signing those blanks and I asked some of the persons in the place what were they signing. They said they were signing for the integrated schools. And I said, "I think I will sign one, too," because I had two kids that were eligible for school.

Q. Where was that meeting held?

A. In the Ebenezer Baptist Church.

Q. Under what auspices was it held?

A. If I am not mistaken, I think it was Charlie Fowler.

Q. This was an NAACP meeting?

A. Yes, sir.

Q. And the purpose of the meeting was to get people to sign up to bring this suit?

A. Well, I didn't get the whole thing of the whole meeting because I got in there late. When I got in there, the meeting was practically over. And I just asked some of the people in there what was they signing? "We are signing for an integrated school."

Q. Were any attorneys present?

A. I think Mr. Robinson—not Mr. Robinson, Mr. Hill. I think he was there.

Q. Have you had any conversation with Mr. Hill or Mr. Robinson since the suit was instituted?

A. No, sir, I have not.

Q. Have you had any written correspondence or report from either of them about the lawsuit?

A. No, sir, not either one of them.

Q. Your contacts have all been through the NAACP?

A. Yes, sir.

Q. And they are the people who got the names and had everything signed up for the attorneys?

A. Well, I don't know about that. I signed this so long I don't remember.

Mr. Gravatt: That is all.

[fol. 472] Cross examination.

By Mr. Robinson:

Q. Mr. Drakeford, is it?

A. Yes, sir.

Q. Let's get a few things straight. When was this meeting that you attended when it was almost all over and signed a paper of some sort? When was that meeting held?

A. I can't recall.

Q. About when was it?

A. I think it was '55.

Q. Where was it held? Do you remember that?

A. Ebenezer Baptist Church.

Q. You said Mr. Oliver W. Hill was present at that meeting?

A. I think he was, yes, sir.

Q. How did you find out about the meeting?

A. Well, the boy told me that the NAACP meeting was going on.

Q. Who told you that?

A. Raymond Bell.

Q. That is how you learned about it?

A. That is how I learned about it.

Q. When you went over there, didn't you find a number of other parents of school children of the City of Charlottesville?

A. I sure did.

Q. Was there any discussion at all during the time you were there?

A. No, sir, it wasn't no discussion.

Q. No discussion at all?

A. No, sir.

Q. Where did you get your information then that the purpose of that meeting was to talk about integrated schools in Charlottesville?

A. I asked one of my clients setting next to me—

Q. One of your what?

A. When I went in the meeting, the thing was just about over. And I asked my next—person setting next [fol. 473] to me what they were signing the paper for and he said they were signing for integrated schools.

Q. For integrated schools?

A. Yes, sir.

Q. And then you asked for a paper to sign one also?

A. I sure did.

Q. How many children did you have in school at that time, Mr. Drakeford?

A. Well, I had two.

Q. You signed the paper right at that meeting, did you?

A. Yes, sir.

Q. Did you read the paper before you signed it?

A. Well, yes, sir, I read it the best I could.

Q. You understood that the purpose of the meeting was to get non-segregated education? That was your understanding?

A. That's right.

Q. And you signed the paper in order that Mr. Hill could represent, you also in an effort to accomplish that objective; isn't that why you signed it?

A. That's right.

Mr. Robinson: That is all.

Mr. Gravatt: Step down.

Mr. Robinson: If the Court please, I would like to make this request. I would like for this witness to be held until this afternoon.

Judge Soper: Very well.



MOSES C. MAUPIN, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Moses C. Maupin?

A. Yes, sir.

Q. Where do you live?

A. Charlottesville, Virginia.

[fol. 474] Q. What is your occupation, Moses?

A. I am a cashier at the Albemarle Hotel.

Judge Hoffman: Would you please turn around and face over here when you answer the questions, if you don't mind? I did not understand his answer.

Mr. Gravatt: Cashier.

Judge Hoffman: Cashier of the Albemarle Hotel in Charlottesville.

Mr. Gravatt: Yes, sir.

By Mr. Gravatt:

Q. Moses, you are a named plaintiff in a suit brought in the City of Charlottesville, for the purpose of integrating white and colored children in the public schools of that city: is that correct?

A. Yes, sir.

Q. Will you state how you became a plaintiff in that suit?

A. When I joined the NAACP, why I joined it for anything that would come up to the betterment of the colored children.

Judge Soper: See if you can't speak a little louder.

A. (Continuing) I say, when I joined the NAACP, I joined it for the betterment for the colored children and I wanted my child to get, or the colored children to get, the benefit of everything that was good.

By Mr. Gravatt:

Q. Who approached you and where was this matter brought to your attention?

A. Well, it was at the Mount Zion Baptist Church when we had the meeting there.

Q. That was a NAACP meeting?

A. Yes, sir.

Q. Who spoke at that meeting, Moses?

A. Well, it was just—it wasn't any public speaking, it was just a get-together meeting.

Q. Just a get-together meeting?

A. Yes, sir.

Q. Was any attorney present there?

[fol. 475] A. No, sir, not that I know of.

Q. What did you do at that meeting to become a plaintiff in this suit?

A. Well, whoever wanted the children to go to an integrated school signed their names.

Q. Who asked you to sign?

A. Nobody asked us to sign, we signed if we pleased.

Q. Who had the paper?

A. Nobody had the paper, it was laying on the desk—laying on the table there. Mr. Fowler was the president at the time and we were not persuaded or told to sign, we signed if we wanted to.

Q. Has Lester Banks talked with you about your testimony here this morning while you were standing out in the hall?

A. No, sir.

Q. Has anybody talked to you?

A. No, sir, nobody.

Mr. Gravatt: That is all.

Mr. Robinson: We have no questions, Your Honors.

Mr. Gravatt: If Your Honor please, there is one other witness that is summonsed and apparently is not here. I would like to have him called again. John O. Watson.

(The witness was called.)

Deputy Marshal Longbeam: He is not here.

[fol. 476] LEONARD R. BLAND, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mr. Bland, this morning you testified concerning a paper that you said that you signed during the spring of [fol. 477] 1951 when there were activities in Prince Edward County concerning the public schools there. I hand you this paper and I ask you to examine it and state whether or not this is the paper that you referred to in your testimony this morning.

A. It is my signature, regardless of the paper.

Q. All right, sir. You signed that paper, did you?

A. That's right.

Mr. Robinson: All right. That is all.

Judge Soper: May we see it, if you please?

Mr. Robinson: Yes, sir. Your Honor, I believe we have photostat copies of all of these authorizations. With little notice, I think we could pull them out.

Judge Hoffman: I take it that this is to be introduced in evidence.

#### OFFER IN EVIDENCE

Mr. Robinson: If Your Honor please, we would offer it in evidence.

Judge Soper: This is signed, and in the body of the document there are the names of the children. They are the school children?

Mr. Robinson: That is correct, sir.

Judge Soper: And the signature at the bottom is the signature of the parent?

Mr. Robinson: That is correct.

Judge Soper: In this case, the witness is Leonard Bland.

The Witness: Yes, sir.

Judge Soper: Have you finished with the witness?

Mr. Robinson: Yes, we have finished.

Judge Soper: Do you care for further examination?

Mr. Gravatt: No, sir.

Judge Soper: Let it be marked as an exhibit in the case.

(The document was received in evidence as Plaintiffs' Exhibit No. 8.)

\*[fol. 478] ALMA R. RANDLE, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mrs. Randle, this morning you testified that sometime during the spring of 1951, at one of the meetings held in Prince Edward County concerning the school situation there, you signed a paper. I hand you this paper and ask you to examine it and state whether or not this is the paper to which you referred when you testified this morning.

A. This is my writing here, but this is not. (indicating).

Judge Soper: We could not hear what the witness said.

The Witness: Part of this on here is, my own signature—

Judge Soper: Is that your signature?

The Witness: Part of it is here, down at the bottom, here.

By Mr. Robinson:

Q. Would you read the words on there that you wrote?

A. I only wrote "Alma Randle."

Q. That is your own handwriting, is it?

A. Yes; and this is one of the kids', I think, Rosetta.

Q. Do you know in whose handwriting the balance of the handwriting on there is?

A. Yes.

Q. You do know?

A. Yes.

Q. In whose handwriting is the balance of the material?

A. I think it is Rosetta's—one of the kids'.

Q. Would that be Rosetta Randle, one of your children?

A. Yes.

Mr. Robinson: That is all.

Judge Soper: I think, for the convenience of the Court and counsel, it would be well to read one of these things into the record, so that you will have it there, instead of having to look at the exhibit.

[fol. 479]

### OFFER IN EVIDENCE

Mr. Robinson: All right. If Your Honor please, I would offer this into evidence and I will read it in its entirety:

### "AUTHORIZATION

#### TO WHOM IT MAY CONCERN:

"I (we) do hereby authorize Hill, Martin and Robinson, attorneys, of the City of Richmond, Virginia, to act for and on behalf of me (us) and for and on behalf of my (our) child (children) designated below, to secure for him (her, them) such educational facilities and opportunities as he (she, they) may be entitled under the Constitution and laws of the United States and of the Commonwealth of Virginia, and to represent him (her, them) in all suits, matters and proceedings, or whatever kind or character, pertaining thereto.

"The child (children) here-in-before mentioned is (are) as follows:

Name in Full	Date of Birth	Sex	Grade Attend.	School Attending
Rosetta Elysa Beth Randle	Dec. 16, 1930	Female	12	R. R. Motton
Ethel Lucell Randle	Apr. 25, 1933	Female	10	R. R. Motton
Martin Rome Randle	Sept 20, 1936	Son	8	R. R. Motton

"Said child (children) resides (reside) at Route 1, Box 5, Rice, Va, Virginia. Witness my (our) signature (s) this 26 day of April 1951

Mother Alma Randle  
feather (sic) Rome Randle

Parent (s) or guardian (s)

(Cross out one)"

Judge Soper: The Stenographer will copy that into the transcript. Let it be filed as an exhibit.

[fol. 480] (The above-copied paper was filed in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Robinson: I have no further questions of this witness.

Mr. Robinson: Will you call next Mrs. Sarah Elizabeth Hicks.

SARAH ELIZABETH HICKS, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mrs. Hicks, this morning you testified that during the spring of 1951, at one of the meetings called with reference to the school situation in Prince Edward County, you signed a paper?

A. Yes, sir.

Q. I will ask you to examine this paper and state, if you will, whether this is the paper you so signed.

A. I know I signed my name.

Q. Is that your handwriting, there?

A. Yes, sir, that is my signature.

#### OFFER IN EVIDENCE

Mr. Robinson: If the Court please, we offer this in evidence and, if the Court would desire it, I would be glad to read the portion of this in longhand, the balance of it being exactly the same as I have just got through reading.

Judge Soper: I think it is not necessary to read it.

Mr. Robinson: All right, sir.

(The last-mentioned paper, marked Plaintiffs' Exhibit No. 10, was received in evidence.)

Mr. Robinson: I have no further questions of this witness.

Mr. Gravatt: No questions.



[fol. 481] ROSA BELL DAVIS, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mrs. Davis, you testified this morning that during the spring of 1951, at one of the meetings held with reference to the school situation in Prince Edward County, you signed a paper. I will ask you to examine this paper and state, if you will, whether this is the paper to which you had reference this morning?

A. Yes, this is it.

Q. Would you speak up so the Court can hear you?

A. I think so.

Q. Is that your signature appearing at the bottom, there?

A. Yes, it is.

OFFER IN EVIDENCE

Mr. Robinson: If the Court please, we offer this in evidence, as well. I have no further questions.

(The last-mentioned paper, marked Plaintiffs' Exhibit No. 11, was received in evidence.)

Mr. Robinson: Mrs. Maude E. Walker.

MAUDE E. WALKER, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

Mr. Robinson: If the Court please, we have photocopies of the four papers that have been introduced in evidence thus far. If, for the convenience of the Court, the Court would desire them, I would be very glad to hand them up now.

Judge Soper: If they are the same, we do not need them.

Mr. Robinson: All right.

[fol. 482] By Mr. Robinson:

Q. Mrs. Walker, this morning you testified that during the spring of 1951 you signed a paper that had connection with the school situation in Prince Edward County. Would you examine this paper and state whether this is the paper that you signed?

A. I don't know whether I seen this or not (indicating). The paper I signed had about two or two lines and a half, and I don't remember seeing all this up here.

Q. Would you look at the words appearing here at the bottom, "Mrs. Maude E. Walker," and will you state whether or not that is your handwriting?

A. It looks like it.

Q. Can you say positively whether or not that is your handwriting?

A. Well, I told you it looks like it.

Q. It looks like your handwriting?

A. Yes.

Judge Soper: What is in the body of the paper that is in handwriting beside the signature?

Mr. Robinson: Shall I read it, Your Honor, or characterize it?

Judge Soper: Read it to the witness.

Mr. Robinson: The words "John Junius Walker, September 17, 1935, male, 9-B, R. R. Morton, Maude Estelle Walker, February 6, 1937, F.S.B. R. R. Morton, Route 2, Box 81, Farmville, Virginia, 26 April 1951."

Judge Soper: Who are those people? Ask her.

By Mr. Robinson:

Q. Who are John Junius Walker and Maude Estelle Walker?

A. They are my children.

Q. Was John Junius Walker, in fact, born on September 17, 1935?

A. John was born then.

Q. And Maude Estelle Walker was born on February 16, 1937?

A. Yes.

[fol. 483] Q. On April 26, 1951, was John Junius Walker attending Grade 9-B at R. R. Morton High School in Farmville?

A. He was at the school; I don't know what grade.

Q. And Maude Estelle Walker was also attending that school on April 26, 1951?

A. Yes.

Q. On that date, did you reside at Route 2, Box 81, Farmville, Virginia?

A. Yes.

Q. Would you look at the balance of the handwriting on here, Mrs. Walker, aside from your signature, and tell me, if you can, whose handwriting that is?

A. Well, I told you it looks like mine.

Q. It looks like all of the handwriting on there appears to be yours?

A. It looks like it.

Q. Or what is it that does not appear to you to have been on there when you saw it?

A. This paragraph here, (indicating) here.

Q. The material up here?

A. Uh-huh.

Judge Hutcherson: What do you have reference to? The printed part?

#### OFFER IN EVIDENCE

Mr. Robinson: The mimeographed part, yes, sir.

If the Court please, we offer this in evidence.

(The last mentioned paper, marked Plaintiffs' Exhibit No. 12, was received in evidence.)

Redirect examination.

By Mr. Grayant:

Q. Is the paragraph to which you refer the paragraph beginning, "I do hereby authorize" and ending with the words, "Pertaining thereto"?

A. I don't remember seeing that.

Q. You don't remember seeing that?

A. No, I don't.

Q. Can you state affirmatively whether or not that paragraph was on the paper that you signed?

[fol. 484] A. Well, all I can tell you, I don't remember seeing that on there.

By Judge Soper:

Q. Can you read it?

A. Yes, I can read it.

Q. Well, read it.

A. "To whom it may concern: I (we) do hereby authorize Hill, Martin and Robinson, attorneys, of the City of Richmond, Virginia, to act for and on behalf of me (us) and for and on behalf of my (our) child (children) designated below, to secure for him (her, them), such educational facilities and opportunities as he (she, they) may be entitled under the Constitution and laws of the United States and of the Commonwealth of Virginia, and to represent him (her, them) in all suits, matters and proceedings, or whatever kind or character, pertaining thereto.

"The child (children) here-in-before mentioned is (are) as follows:"

Judge Soper: I think she has done very well. I wish the lawyers could read as clearly.

Are there any further questions?

Mr. Robinson: We have no further questions, Your Honor.

We have no further questions of this series of witnesses, if the Court please, and, so far as we are concerned, may the other two witnesses from Charlottesville come back in the courtroom if they desire?

Mr. Mays: I would like to call Mr. Harrison Mann.

C. HARRISON MANN, JR., called as a witness by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Mays:

Q. Will you please state your full name, your place of residence, and your occupation?

[fol. 485] A. Charles Harrison Mann, Jr.: I am a lawyer and a publisher; my place of residence is Arlington County, Virginia.

Q. Do you hold any kind of political office or position in Virginia, and if so, what?

A. Yes, sir, I am a Member of the House of Delegates.

Q. For how long a period have you been and what district do you represent?

A. I represent the District of Arlington and I have been a Member since 1954.

Q. I call your attention to an Act of the Extra Session of the General Assembly of Virginia passed last July, which is designated as Chapter 32 and which may be further identified by stating that it relates to the matter of registration of organizations involved in racial activity. Does that identify it enough for you to know what I am speaking of?

A. It does not; so, sir, I am not familiar enough with the chapter numbers as I am the bill numbers.

Q. Would you look or do you have a copy of Chapter 32?

A. Yes, sir.

Q. It is on page 21.

A. Yes, sir, I am familiar with the bill.

Q. Were you a patron of that measure?

A. That is correct. I was chief patron of that measure.

Q. As chief patron, when did it occur to you that the subject matter of this legislation should be enacted into law?

A. During the latter part of the regular session of 1956.

Q. Were there any reasons that prompted you to think that this should be enacted into statute law?

A. Yes, sir.

Q. What were they?

A. About that period of time the so-called Lucy incident down in Alabama was causing a great deal of violence in that area. At about the same time, Casper was beginning his operations in the entire eastern part of the United States. I felt that it was very probable that in Virginia and elsewhere we were going to be faced with a situation fused with a great deal of racial tension that might ultimately lead to violence and that we in the State of Virginia should [fol. 486] do everything we possibly could to see that that violence did not occur and that tension did not reach the

point where it would occur. It was for that reason that I felt it would be highly desirable that all of those elements which would tend to create any racial tension or violence in the State of Virginia should, under law, register and their identities be known so that the proper responsibility could be placed on those people; and that there would be, by reason of the fact that they were known, a deterrent to any inclination on their part to breach public or private rights.

Q. Now, you mentioned one Casper, can you identify him a little more clearly? What was his first name?

A. I think his first name is John Casper.

Q. Does he operate out of any particular city or area, or do you know?

A. At that time, he was operating out of the city of Washington which is right across from my home.

Q. What was the character of his operation, so far as you know?

A. I think the character of his operations at that time was very largely to line up his chapters of the Seaboard Citizens Councils. Subsequently, of course, we are all familiar with his operations in Clinton and in Nashville and in other places where he has gone down and fomented violence.

Q. As I understand it, it was about the time of the regular session in the early part of '56 that you had these ideas and thought that you should have legislation to meet this situation?

A. That is correct, sir.

Q. Did you attend the extra session of the General Assembly in the fall of that year?

A. Yes, sir.

Q. Had you, in the meantime, done any work on a bill of this character?

A. Yes, sir, I had drafted a bill to be subsequently introduced, either at a special session or at a regular session that might subsequently come.

Q. When you came to the extra session of the General Assembly in the fall of '56, did you introduce a bill of that sort?

[fol. 487] A. That is correct, the special session.

Q. Did you find any support to that bill in the General Assembly, so far as other patrons are concerned?



A. Yes, sir, there was a tremendous amount of support. As a matter of fact, there were quite a number of people who had somewhat similar ideas and a similar plan, I discovered.

Q. Now the bill as it ultimately came out of the General Assembly, was the bill precisely as you had brought it to Richmond or were there changes made in it?

A. No, it was not the same bill that I introduced. The bill was introduced and referred to the Courts of Justice Committee of the House. The Courts of Justice Committee of the House reported out a subsequent measure without any patrons whatever as the bill of the Courts of Justice Committee.

Q. Did you continue to be its chief sponsor?

A. I continued to be its chief manager.

Q. And that was the bill that was ultimately adopted, went through the Senate and was ultimately adopted?

A. Yes, sir, the substitute bill from the Courts of Justice Committee.

Q. Were you the chief patron of any other legislation at that session?

A. Yes, I was the chief patron of a great many bills in that special session.

Q. Were you, to be specific, the chief patron of any of the bills in this series beginning with Chapter 31 and going through Chapter 36 of the Acts of the extra session?

A. I was the chief patron of Chapter 31, Chapter 32, Chapter 33, Chapter 35, and Chapter 36.

Q. Did you have all of those bills in mind when you first came, or did you have some particular ones in mind other than Chapter 32?

A. No, sir. When I came to the special session, I had drafted Chapter 32 and Chapter 35.

Q. Can we identify that?

A. Those were the only two bills which I had planned to introduce.

[fol. 488] Q. Shall we identify Chapter 35 as the one dealing with barratry?

A. That is correct.

Q. When did you conceive the idea of that statute?

A. Some time during the months of June and July of 1956.

Q. What did you have in mind?

A. Well, I had in mind the background of what was occurring in the State of Virginia and throughout the United States. There had been reported that the press had discovered that a number of the plaintiffs in the Prince Edward case had indicated that they did not realize that they were bringing a suit in connection with integration, that they thought that they were merely bringing an action in order to obtain better schools.

In northern Virginia, several lawyers attempted to intervene in the Federal District Court up there on the basis that the NAACP was practicing law. At that time, it may be recalled that the case against the NAACP in Texas was being tried and there it became quite evident that the NAACP was not only soliciting plaintiffs for their cases, but in at least one case was paying a plaintiff to act as such. I felt by reason of what I considered to be a breach of legal ethics and certainly good public policy that the common law offense of barratry—and incidentally I might say that I was also at the same time thinking about the common law offense of maintenance, however I had not drafted a statute—I felt that those Acts would be a highly desirable thing. May I add further to complete my answer?

Q. Please continue.

A. At the same time, it was perfectly evident that not only cases of that nature were being pursued from the standpoint of the NAACP, but in Maryland, in Kentucky, and in other—in Louisiana and in other areas there was a large number of cases also being brought by white people.

Q. Will you state to the Court just how it was that you became patron of the other three bills that you mentioned?

A. Yes, sir. When I got to the special session, I found that a large number of the members of the General Assembly had been giving this subject a great deal of thought. I found, for example, that Senator Fenwick had drafted a [fol. 489] bill on maintenance. I was aware of that fact. I found that other people had bills relating, or proposed bills relating, to registration. I found that at least one other delegate had a bill relating to a General Assembly investigative committee to investigate possible barratry offenses and maintenance offenses. Likewise, there were

some other similar bills. I don't recall who had them, but one in particular was to amend the running and capping, or what I prefer to call the ambulance-chasing section of our Virginia Code. I, and several others who were interested in this legislation, got those people who were primarily interested in this legislation together and asked for a conference with the Governor. Now this was after the special session had started. We discussed all the proposed bills and requested the Governor to request the General Assembly that they enact the bills which are under discussion.

Q. That special session of the General Assembly could enact only such legislation as it was called to enact unless it had the unanimous consent of the Members or the request of the Governor; is that correct?

A. That is correct. At the beginning of the special session, a resolution was passed by both houses limiting the subject matter of the session to matters pertaining to education and only those matters which were agreed to be heard by the General Assembly, by common consent, unanimous consent, or by request of the Governor.

Q. And I take it that you went to the Governor and requested him to request action on these bills?

A. That is correct, sir. It is the simplest way to get the bills before the General Assembly.

Q. Your district comprises what county?

A. Arlington County, sir.

Q. What is the population of that county?

A. I think the census population, sir, is 165,000. I don't know what the Chamber of Commerce census is.

Q. Is the proportion of the colored people there very large?

A. No, sir; I would say about 10 percent.

Q. Have you had any difficulties, so far as the NAACP [fol. 490] was concerned, in that area from any threats of violence at that time?

A. Not from the NAACP, no, sir.

Q. Is it fair to say that your chief concern was John Casper and his activities at that time?

A. Not only fair to say, but that is the situation, sir. As a matter of fact, I was so concerned about his activities

and his close residence in the District of Columbia that I requested of my Commonwealth's Attorney knowledge of ways in which I could proceed in the event that he brought his activities across the river.

Q. Let's identify him a little better, just for the record.

A. John Casper.

Q. Is he a white man?

A. That is correct.

Q. Who is violently fighting integration?

A. That is correct.

Q. Because of your activities, or for any reason, did you during that period, and have you since, been pestered by any large number of anonymous communications by phone or otherwise?

A. Yes, sir.

Judge Cooper: This is corroborative evidence, I understand.

Mr. Mays: We want the Court to know that it comes from both sides.

A. (Continuing) I am rather continuously the butt of abuse from all varieties of crackpots, and I think almost anybody in public life that takes a position with respect to any matter is going to receive, from a certain type of people, all forms of abuse and threats, and so on.

By Mr. Mays:

Q. At any rate, you have been getting it in volume and continue to do so?

A. Most of it has been by telephone, yes, sir.

Mr. Mays: We have no further questions.

[fol. 491] Cross examination.

By Mr. Robinson:

Q. Mr. Mann, as I understand your testimony you are chiefly interested in Chapters 31 and 33 because of the activities of John Casper that you feared would extend south of the Potomac into Virginia; is that correct?

A. Not only John Casper, but it was perfectly evident to me that there were many racial organizations springing up throughout the entire country and including the State of Virginia. The Defenders in the State of Virginia, the Ku Klux Klan was springing up in Florida they had already made their appearance in other states.

Q. Do you mean to say that there had occurred in the State of Virginia when you were formulating your judgment about this legislation incidents of a character that have been attributed to John Casper outside of the State of Virginia?

A. No, that had not.

Q. So your main concern was Casper and you were afraid of violence resulting from active participation by people like him and that is really why you were interested in getting enacted into the statute law what are now Chapters 31 and 32?

A. No, my main concern was not Casper, my main concern was to avoid in the future situations whereby people of Casper's type and organizations interested in racial matters would possibly cause racial tension or violence.

Q. It didn't take any membership list in Knoxville, Tennessee, or Nashville, Tennessee, to get Casper arrested and jailed for inciting a riot, did it?

A. It certainly did not.

Q. Are you familiar with the fact that he got himself in difficulty in Nashville, Tennessee, for inciting a riot and was jailed on that account?

A. Quite familiar with it.

Q. Are you familiar that he got himself in some kind of difficulty, I don't know whether it was the same thing or not, but some similar kind of difficulty in Knoxville, Tennessee? Isn't that correct?

[fol. 492] A. That is correct, with a lot of other people.

Q. And the people down there apparently didn't need any list of members of people who were associated with Casper to take care of that situation, did they?

A. No, but I am inclined to think that the people who helped him would have been far more restrained had those people been members of a well-known organization whose names appeared as a public record.

Q. Are you familiar with the length of time that the National Association for the Advancement of Colored People has operated in Virginia?

A. No, I am not.

Q. If I told you that the National Association for the Advancement of Colored People has operated in Virginia since 1934, would you have any information to the contrary?

A. I would have to rely on your statement.

Q. Has there occurred, to your knowledge, any incident in the State of Virginia since the year 1934 of a character of incidence that you would attribute to John Casper?

A. No; there has not.

Q. Now, Mr. Mann, let's get over to Chapters 33, 35 and 36. What was your motive behind those provisions? Why were you interested in getting them enacted into law?

Judge Soper: What chapters?

Mr. Robinson: Chapters 33, 35, and 36. If the Court please, they are the other three statutes that are involved in this litigation.

A. My motive in getting those enacted into law was to prevent as a matter of public policy that type of activity which was common knowledge was going on and being participated in by the NAACP in soliciting plaintiffs and, in some instances, even paying a plaintiff to bring a suit, the type of activity which I have previously described in my direct testimony.

By Mr. Robinson:

Q. In formulating that decision, you acted on something that you read in a newspaper about something that you [fol. 493] thought happened in Prince Edward County. That was one of the things that you acted on, wasn't it?

A. That is correct.

Q. What were the other things that motivated you to the decision that you needed some more laws in order to control what you assumed to be going on?

A. The effort that was being made by the attorneys in the northern district of Virginia to intercede in that par-



ticular case because the NAACP, a corporation, was practicing law in Virginia.

Q. But, I assume that you familiarized yourself with the activities of those attorneys to intervene in that case. You are familiar with what happened in that case?

A. I am familiar that Judge Bryan denied the right to intercede. Why he denied that right, I am not able to say.

Q. Didn't you take time to find that out?

A. No, I didn't take time to find that out.

Q. What else was it that motivated you to this decision that we needed some laws on this subject?

A. The general activity of the NAACP in other states, particularly the State of Texas, in which it became very apparent that they were engaged in soliciting plaintiffs, paying plaintiffs, operating as free counsel for plaintiffs, and so forth.

Q. Where did you get your information about what was going on in Texas? Where did that come from? Did you go to Texas?

A. From the New York Times, from other newspapers, news magazines; and, as I recall, from the Race Relations Reporter.

Q. What were these stories about? What was the occasion for this information getting in the newspapers that you just made reference to? Was there anything going on in Texas?

A. As I recall it, there was a suit to bar the NAACP from doing business in Texas.

Q. Did that suit come up for trial in the State of Texas? Was it the news stories about this suit in Texas that constituted this body of newspaper information that you acted on?

[fol. 494] A. That is correct; they were matters in the State of Texas.

Q. Are you familiar with the date on which your bills, Chapters 31, 32, 33, 35, and 36, were approved and became law in Virginia? Do you know the date that they took effect? Wasn't it September 28, 1956, to be exact?

A. I was going to say that it was in the latter part of September that those bills became effective.

Q. And the special session wasn't called until about the latter part of August, about the 28th or 29th of August, 1956; isn't that correct?

A. That is correct.

Q. And you said that so far as the materials or the ideas that were codified in Chapters 33, 35, and 36 were concerned, that you didn't even have those in mind until after the special session got underway; isn't that correct?

A. Oh, no, no, I had those in mind—those occurred to me in July and I believe, as a matter of fact, as early as June.

Q. What had happened in June and July that gave you those ideas?

A. The matters which I have recounted; the action in Texas which had not culminated, had not been completed; the action with respect to the Prince Edward case; and the material that was of interest in that time.

Q. Let me ask you this, Mr. Mann. Do you know when that Texas case that you have been talking about was tried?

A. I don't know when it was tried. It was brought, I believe, in about June or July of 1956.

Q. The story that you read about were the stories of trial of that case. Do you remember when the trial of that case started?

A. No, I don't.

Q. Would you be surprised if I told you some time after September 20, 1956?

A. The trial of the case?

Q. The trial of the Texas case.

A. No, I would not be surprised if you told me the trial of the Texas case.

Q. You mean you took whatever action you did on the basis of the Texas situation after September 20, 1956; and [fol. 495] September 28, 1956; when those bills became law by the signature of the Governor?

A. I am sorry, I didn't get the import of your question.

Q. You testified, Mr. Mann, that one of the things that influenced you to the decision that you made about these three laws was what you read in the newspapers concerning the trial of the Texas action.

A. That is right.

Q. Which did not occur until September 20, or some time the latter part of September, 1956?

A. That is correct.

Q. Do you still say that what you read in the newspaper about the Texas trial influenced you in your activities concerning statutes that became law as early as September 28, 1956?

A. Yes, it influenced me very considerably because it tended to corroborate all of the background that we had had in the State of Virginia prior to that time.

Q. So you didn't have those in mind before, but they just corroborated an idea that you had formulated on something else before that. Isn't that right?

A. Well, one always gets an idea as to legislation.

By Judge Soper:

Q. The bills were drawn up prior to the Texas legislation?

A. Yes, sir, they were drawn up.

Q. You worked on them yourself?

A. I would say probably in the month of August, sir.

Q. Let me ask you this. Take Chapter 31, for example, the general provision is that a person or an association unless it is registered may not solicit or expend funds for litigation in which it has no financial interest.

A. Yes, sir.

Q. That was aimed, as I understand it, primarily at the activities with which you were informed of the NAACP in Virginia?

A. Your Honor, that is not quite the case with Chapter 31. Chapter 31 was not the bill that I had—the registration bill that I had originally intended to introduce.

Q. All right, Chapter 32.

[Col. 496] A. That was Chapter 32. Chapter 31 was proposed by someone else because they felt, apparently, that anybody who solicited any funds for such purpose whatever—

Q. I understand exactly, but it was a companion bill to 32?

A. Yes, sir.

Q. Which you did father as a patron and which you sponsored because you felt that the activities of the NAACP in Virginia justified it?

A. That is correct, sir.

Q. Under Chapter 31, an association, unless it is registered, may not solicit or expend funds for litigation in which it is financially interested, at least, that is my understanding of it.

A. Any direct interest, I believe.

Q. Unless he has a pecuniary interest or liability.

A. Unless such a person is a party or unless he has a pecuniary right or liability therein.

Q. That is right.

A. Yes, sir.

Q. If a person or an association does register under that statute, then, so far as that statute is concerned he may solicit and expend funds for litigation in which he has no financial interest.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir. I don't think that it is permissive—

Q. I am talking about Chapter 31.

A. Chapter 31, yes, sir. In other words, he may go forward and solicit funds after he registers.

Q. That is, he is forbidden to do it unless he registers.

A. That is correct.

Q. If he does register, he may do it?

A. That is correct, sir.

Q. So that the registration does not in any way interfere with his doing the things which you were trying to prevent.

A. No, sir.

Q. If you go to Chapter 32, which you were especially helpful in preparing, it is somewhat broader than 31, as I understand it.

[fol. 497] A. Yes, sir.

Q. Because without registration it forbids engaging, as one of the principal activities of the Association, in promoting race legislation or advocating integration or segregation or in causing racial conflicts or in raising or expending funds.

A. In racial cases.

Q. For racial litigation.

A. Yes, sir.

Q. Your understanding is that if he registers he may do all of those things?

A. So long as no other law bars him from doing so.

Q. So that the only point of those two things is to secure registration and the registration would have no—it is not quite clear to me what you said that you had in mind as the reason why you wanted the registration of persons engaged in the activities of promoting litigation or legislation of a racial character unless they had a money interest. I am not sure what you said you had in mind you would derive from the registration of such a person.

A. Well, in Chapter 32, sir, which, as you have pointed out, is a broader registration measure than Chapter 31, the purpose of that registration there encompasses three groups, all of those groups being involved in racial matters. My purpose in that bill was to get the committee to publish record the names of the people who when the organizations engaged in these two activities their names would be a part of the public record so that direct responsibility could be placed on the organizations and the individuals engaging in that for any of the activities that they undertook to do.

Q. Chapter 36 seems to be limited, so far as I can see at the moment and that does not contemplate registration, it is a prohibition.

A. No, sir, that is what—this, as I recall, was primarily Senator Fenwick's measure—

Q. May I interrupt you? It is true, to get this much out that is clear between us, that this statute does not require registration?

A. No, sir.

[fol. 498] Q. And the registration wouldn't do you any good.

A. In this statute?

Q. Yes.

A. I am not too sure, sure, that registration wouldn't do a great deal of good in connection—

Q. Where is there any reference to registration in Chapter 36?

A. There is none, sir. But I would like to point out that under the registration laws where people have to account for their expenditures and have to account for those expenditures under oath that those expenditures accounted for under oath may well disclose a violation of this section.

Q. I don't doubt it. But what I am trying to say is that this section cannot be cured by registration, the act of a—

A. Oh, no, sir. No, sir, I didn't get your point.

By Judge Soper:

Q. Now, did you draw this section?

A. No, sir.

Q. I remember, a good many years ago, trying a case in Maryland where a fellow had drawn a law against making oleomargarine and then he was a lawyer in the case, and he told the whole courtroom there wasn't any use asking anybody else what the law meant, because he drew it and he knew.

A. Well, sir, I don't find myself in that position.

Q. But do I understand that this prohibits either giving or accepting anything of value as an inducement to commence?

A. Yes, sir.

Q. Is it limited to that phrase?

A. I believe it is, sir, and down here there is a second prohibition, down in Section 1(b).

Q. Do I understand that Section 1(b) makes it unlawful for a person who has no financial interest in or no relationship by blood or marriage with the plaintiff to assist in bringing or maintaining a suit, to advise, counsel, or otherwise instigate the bringing of a suit?

A. Yes, sir, and that is a suit against the Commonwealth or any of its administrative bodies or officers.

[fol. 499]

By Judge Hutcheson:

Q. Is that limited by the phrase, "whose professional advice has not been sought in accordance with the Virginia Canon of Ethics"?

A. That is true. That makes it perfectly proper and that was written in to make it perfectly proper.

By Judge Soper:

Q. The purpose of this section was to prevent any assistance given by any such body as the NAACP to any person who wanted, for example, to bring a suit regarding the acceptance of his children into school?

A. That is correct; the NAACP or any other group that did not have a direct interest in the suit.



Q. We have been talking a lot about registration, and I am not minimizing that phase of the case, but, as I understand it now, this Section 1(b), irrespective of registration, would put the NAACP out of business in Virginia?

A. Well, I wouldn't say, sir, that it would put them out of business. It might put them out of business as a corporation practicing law.

Q. I am not talking about legal technicalities; I am talking about an organization that comes in here, that spends money and helps people to bring suits to assert what they regard as their constitutional rights; and my question is, whether or not this Section 1(b) would make that unlawful.

A. That aspect of their activities, it would make unlawful.

Judge Soper: Exactly.

By Judge Hoffman:

Q. Mr. Mann, would it not also substantially eliminate all class actions? By that I am not referring to race at all—just forget the racial situation entirely. Assuming that you are employed by the residents of a certain area in Arlington County, let us say, to fight some zoning ordinance in court; unless your advice were directly sought by each and every individual, you could not bring this action [fol. 500] under Chapter 36; am I correct in that conclusion?

A. No, sir, because there are a number of exceptions in this particular chapter and that particular example you gave is one of the exceptions. But, irrespective of whether or not it were an exception, in order to try to answer your question, I would not say, sir, that it would prohibit all forms of class actions, so long as individuals who had a direct interest in the suit wished to retain my services in order to bring that class action, but it would certainly, as I think the statute very clearly sets out, prohibit others and anyone who does not have an interest from offering funds as an inducement to someone to bring litigation.

Q. Well, I see your exceptions under Section 6 of Chapter 36, but speaking specifically with respect, let us say, to a zoning law, I do not see the exception there. I just happened to hit on that illustration.

A. Well, that is the reason why, sir; I answered your question exclusive of that illustration. That is in the exceptions, I am quite certain.

Q. Suppose that you were called upon to represent a church group in connection with some matter; do you think you could do that under the wording of that statute?

A. Yes, sir; if that church group employed me for the purpose of bringing that action, I see no reason at all why that church group should not employ me, why the church vestry or board of directors should not obtain the funds from their group for the purpose of carrying forward that action.

By Judge Soper:

Q. Could they go further and get funds from some other organization to assist them?

A. Not as an inducement for me to bring that action, no sir.

Q. Not as an inducement but as an aid. Suppose the church group wanted to bring the action; they did not have sufficient funds; could they get those funds from some other person and, if they did, would that other person be an offender under this statute?

[fol. 501] A. If the request for the funds and for the giving of the funds did serve as an inducement for the church to commence that action, it would be prohibited, sir, in my judgment.

By Judge Hoffman:

Q. Well, if you named your fee and the church did not have sufficient to pay for your services and the church then went on the outside to raise the money for the purpose of bringing the action to pay your fee, that would induce you, I suppose, to bring the suit, if you were sufficiently compensated, would it not?

A. Well, I would have named my fee, sir; how they got the money would be a matter, I think—

Q. Well, would it not be an inducement to you to bring the suit—the extra money that would come from an outside source—and would not that be against the law?

A: No, sir, I don't think so, and I don't think that inducement runs so much in this situation to the attorney as it does to the plaintiff to bring the suit.

Q. All right. Let us look at Chapter 33. That makes it an offense, I believe a misdemeanor—there are some sections in the Virginia Code which have been in effect for some years and which must be read in connection with these Sections 33 and 35 because they prescribe penalties for violating those sections?

A. Yes, sir.

Q. So, bearing that in mind, is it not true that under 54-78 it would be unlawful for a lawyer in Virginia to accept any financial assistance or fee, or part of a fee, from the NAACP, in a school case?

A. Are you referring to Section 54-78, sir?

Q. Yes, sir.

A. May I read it and refresh my memory as to that section? I am not in the enviable position of the man who wrote the oleomargarine law. I didn't write this one, either.

Q. But you have become an expert in this field and I am asking your assistance.

A. On a very quick reading of this, sir, as I see it, the only thing that it does is provide that one may not be a runner for a corporation or a person or a partnership in [fol. 502] obtaining or solicitation of business for an attorney at law who is serving for that corporation, association, or partnership.

Q. Well, if there is a meeting of colored people who are interested in securing education for their children and it is the sense of the meeting that litigation is necessary, and the people in this meeting authorize the bringing of such a suit—if they authorize lawyers to bring such a suit, can the lawyer accept compensation from the NAACP?

A. I would think so, sir.

Q. You would think so?

A. Yes, sir. I see no situation here where solicitation of business is involved, either by the lawyer or by the NAACP.

Q. But look at the words that come after the solicitation of business, at the top of page 35. Beginning with the italicized portion that begins on the third line, is there not some indication that any association that acts in connec-

tion with any judicial proceeding—that any attorney who acts in connection with a judicial proceeding for a corporation or association which has no pecuniary interest has violated the law by becoming a runner, or is guilty of malpractice?

A. No, sir. My understanding of this section is that there is no reason why he should not serve as long as he or the corporation or the association which he represents does not go out and solicit business, or a representative of that group solicits business. Now, if a representative does solicit business, then this is a direct prohibition against that—

Q. Solicit business for whom?

A. For themselves.

Q. You mean for the lawyer?

A. For the lawyer, yes, sir; but if the corporation or the association that pays the lawyer—

Q. I don't understand your last statement.

A. Well, if an agent goes out and solicits plaintiffs for the NAACP, which pays the lawyer, then the NAACP, which hires the lawyers, would be in violation of this section of the law because they had a runner who solicited business for them.

[fol. 503] Q. Well, if the people in a certain locality are being deprived of proper school facilities and this national organization becomes aware of that fact and goes into that neighborhood in order to try to improve conditions, it would not, in your judgment, be lawful for it to call a meeting to suggest to those people that their rights might be achieved by litigation in court which the association would be willing to finance? That would be a violation of this section?

A. That is correct, sir, in my judgment.

Judge Hutcheson: May I ask a question now, if you gentlemen are through?

Judge Soper: You have been very patient, Judge, as usual.

By Judge Hutcheson:

Q. You have almost cleared up one point, Mr. Mann, but turn back to Section 36 again, will you, please. Section (a), as I read it, prohibits the giving of a consideration to induce

a person to commence or prosecute a suit—I understand it prohibits the giving of a consideration to induce a person to bring a suit. Do you read any prohibition in that section against contributing to a suit already brought?

A. Yes, I do, because the prohibition there is “to commence or to prosecute further any other original proceedings.”

Q. I see.

A. I would venture the thought that after a case finished a particular step in the proceedings, this statute would come into effect if the funds were made available to continue the proceedings further.

Q. I see. After it had been instituted?

A. Yes, sir.

Q. If it were an inducement to continue the proceedings?

A. That is correct.

By Judge Soper:

Q. Inducement to whom?

A. Inducement to the plaintiff, sir.

[fol. 504] Q. Not an inducement to the lawyer but to the plaintiff?

A. That is correct.

Q. You read in that connection “inducement” the same as “assistance”?

A. Yes, sir.

By Judge Hutcheson:

Q. Is inducement the same as assistance?

A. I don't think inducement is the same as assistance, unless the assistance induces.

Q. Now, going to Sub-Section (b)—I suppose the “inducement” or “assistance” is a matter of semantics, but going to (b), is there anything in there to prohibit the representation of anyone by counsel provided his advice has been sought in accordance with the usual Canon of Ethics?

A. No, sir, nor actually in the preceding section, because you will note in the preceding section the last clause says: “This section shall not be construed to prohibit the

constitutional right of regular employment of any attorney at law," and so on.

By Judge Soper:

Q. Just one other question, to go back to 33 again. Suppose a case of this kind: that a group of colored people, realizing they did not have what they thought they should have in the way of education for their children, would get together and talk about it and say, "We ought to do something to secure our rights"; it is obvious they might say, "We haven't got the money, but a lot of us have been contributing and a lot of others have been contributing to the NAACP. Let's call on them for help," and they do call on the NAACP for help, and the organization investigates the complaint and finds out there is substance in it and says to this group, "We think your claim is meritorious and we will help you to pay lawyers' expenses," or, "We will pay all of the expenses, court expenses and the lawyers' expenses"; would it be a violation for a lawyer, knowing those facts, to accept the employment?

[fol. 505] A. That I would not venture to answer, sir. I do not know whether that would be an inducement or not.

Q. I am not talking about 36 now.

A. I'm sorry.

Q. I am talking about 33.

A. I was going to say, sir, unless it violated some other section—

Q. Well, I'm talking primarily about 33. I should have called that to your attention.

A. I'm afraid, sir, I will have to have the question repeated, because I had my mind centered on the other chapter.

Q. Simply that a group of colored people who feel that their children are not receiving adequate education get together and counsel together and realizing that there is this Association which has helped people in their situation by litigation or otherwise resolved to call on the NAACP for help, and they do. The NAACP investigates, finds the cause is worthy, and tells them that they will



finance it, and they do finance it and the lawyer accepts employment knowing those conditions. Has the lawyer violated Chapter 33?

A. Insofar as the solicitation aspect is concerned—

Q. No, not insofar—just forget insofar. Take what I said.

A. Yes, sir, but you have asked me about three questions in one.

Q. I withdraw it all. I gave you the picture of these people in the association that cannot pay it themselves and they call on the NAACP. The NAACP says, "We will finance you." It does finance them and the lawyer knows that and accepts employment.

A. All right, sir. I would say he would be in violation of Chapter 36, sir.

Q. I am asking you is he in violation of Chapter 33?

A. I would say not, sir.

Q. What language in 36 would be violated by the supposed case?

A. The promise of services or money as the inducement for them to commence this action.

Judge Soper: Very well. Thank you, sir.

[fol. 506] By Judge Hutcheson:

Q. What do you call an inducement? If there is a voluntary request of the organization for assistance originating with the group, not with the organization?

A. I would say, sir, an inducement is something which the case would not have begun unless it were available.

Q. Whether the request originated with the plaintiff or with the organization?

A. I don't think that has anything to do with the Chapter 36 which prohibits the giving of service and money and so forth as an inducement to somebody to commence an action.

Q. You think inducement and assistance are the same, mean the same?

A. Well, certainly assistance would be an inducement, yes.

By Judge Hoffman:

Q. Mr. Mann, under Chapter 32, Section 9, there are certain exemptions from the registration provisions, one of which is in connection with anyone associated with or participating in any manner relative to a political campaign. Does the statute define otherwise when a political campaign begins? I can visualize when it would end, but when does it begin? Or is there another section of the Code perhaps that defines when it begins, which of course would clarify this.

A. There is a section of the pure election laws which indicates that a campaign begins at the time of the filing, final deadline or filing, for campaign.

Q. That would be your construction of that, then?

A. Yes, sir.

By Judge Soper:

Q. I notice also that in Chapter 32 there is the exception of television broadcasting means of communication as well as newspaper. A man can say anything he wants on a television and urge people to bring suits for segregation or integration and he doesn't have to register and he commits no offense; is that true?

A. Yes, sir, that is correct, as long, of course, as he doesn't violate the criminal libel laws. There is no prohibition on any free speech or the right of people to speak or anything else in that section, sir. As a matter of fact, it specifically exempted it. It wasn't in the original bill, sir. It was written in the original bill. It was written in the original bill the provision that "nothing herein shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances," and so forth. This Section 9, with many of its provisions, as I recall, was written directly out of Chapter 10 of the North Carolina Statutes about—I don't know when they were passed, but quite some years ago, relating to the influencing of public opinion. That was not a lobbying statute, that was an influencing opinion statute.

By Judge Hoffman:

Q. But that applies and protects the newspapers, television stations, radio stations, et cetera?

A. Yes, sir.

Q. Does it protect the individual who does the speaking?

A. Yes, sir. I would say that it protects the individual, particularly in view of the proviso at the end of Section 2, the one which I just finished reading that is near the end of the paragraph on page 22; which reads: "and provided, further, that nothing herein shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances, or to an individual freely speaking or publishing on his own behalf in the expression of his opinion and engaging in no other activity subject to the provisions hereof and not acting in concert with other persons."

Judge Soper: Gentlemen, I am afraid that the Court has done too much cross-examination. We do not want to take the place of lawyers or cut them off. None of the lawyers look like they want to ask any questions, so shall we excuse this witness?

[fol. 508] Mr. Robinson: If Your Honor please, we have only one other question.

Judge Soper: I will say for the satisfaction and convenience of counsel that when this witness is excused we will take a short recess.

Cross examination (Continued).

By Mr. Robinson:

Q. Mr. Mann, let me ask you this: Suppose a defendant in a capital case who has been convicted and has been sentenced to the death engages an attorney to take an appeal for him. The attorney utilizes the defendant's financial resources as far as he can, but yet does not have a sufficient amount of money to get his printing costs on appeal taken care of. The attorney or the client appeals to the NAACP for assistance, financial assistance, so that he can get enough money to pay for the printing

of his record and his briefs in order that the appeal may be considered.

Mr. Mays: We object, Your Honor. We do not see the relevancy.

Judge Soper: Let him answer.

By Mr. Robinson:

Q. (Continuing) What I want to ask you, Mr. Mann, in a situation of that sort, is there anything about either of these five laws that would prevent that attorney, if he accepted that money, from violating one of these laws?

A. Counsellor, he would not be in violation of any of these laws.

Q. He would not be in violation of Chapter 36?

A. That is right.

Q. And what is about Chapter 36 that would excuse him from violation?

A. In Section 6, you will find, on page 40, this statement and exception: "nor shall this Act apply to suits involving rates or charges or service by common carriers or public utilities, nor shall this Act apply to criminal prosecutions."

[fol. 509] Q. Now, Mr. Mann, let me ask you about Chapter 35, the barratry statute. Wouldn't there be a violation through the receipt by the attorney of that money in Chapter 35?

A. No, Counsellor, there would not be, for the same reason.

Q. Would you feel that the last section of Chapter 35 would not be controlling in that respect and would render the attorney in violation of that chapter if he accepted that money?

A. I think I answered your question when I said that Chapter 35 would not be applicable.

Mr. Robinson: You don't think it would be applicable. Thank you, sir.

Judge Soper: Are there any further questions?

Mr. Mays: That is all.

Judge Shepard: Take a recess for a few minutes.

(A short recess was taken, after which the trial was resumed.)

Mr. Gravatt: Call Mr. B. B. Rowe, please.

B. B. Rowe, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Will you state your name, age, residence, and occupation, please, sir?

A. B. B. Rowe, forty-six years old, 343 56th Street, and I am General Manager of a savings and loan association in Newport News.

Q. Mr. Rowe, did you discharge any responsibility in connection with the appraisal of real estate for tax purposes in the City of Newport News upon which appraisals the assessments and taxes on real estate are levied?

A. Yes, sir.

[fol. 510] Q. What responsibilities did you have in that connection?

A. Well, I was chairman of a board of three assessors.

Q. Appointed by whom?

A. Appointed by the City Council of Newport News.

Q. Are the assessments for tax purposes in Newport News made upon the basis of the appraisal of that committee?

A. Yes, sir.

Q. Did you make certain investigations at my request in regard to the appraised value of real estate standing in the names of certain people residing in the City of Newport News?

A. Yes, sir.

Q. Do you have a memorandum showing the results of that investigation, sir?

A. Yes, sir, I do.

Q. Did you examine real estate standing in the name of Alexander and Clara Belle Atkins?

A. Yes, sir.

Q. Will you state what real estate they owned and what its appraised value is?

Mr. Robinson: If Your Honor please, I want to object to that question and similar questions—

Judge Soper: Suppose we take it subject to exception.

Mr. Robinson: All right, sir. Am I to understand, if Your Honor please, that our objection and exception would stand with respect to all similar questions asked of this witness?

Judge Soper: Yes, sir.

Is that satisfactory?

Mr. Gravatt: Yes, sir, entirely.

A. Alexander and Clara Belle Atkins, property located at 3212 Roanoke Avenue, designated as Lots 38 and 39, Block 5-D—do you want that?

By Mr. Gravatt:

Q. Yes, sir, that is exactly what I want, and then I want you to give the appraised value.

A. The appraised value of that property is \$10,675.

[fol. 511] Q. Does that value, Mr. Rowe, represent the fair market value of the property as found by your board of appraisers?

A. Yes, sir, it does.

Q. Now, will you read the name of each of the persons owning the real estate and the appraised value of it as disclosed on your report, please, sir?

A. Yes, sir.

Q. So that we will not have to ask you about each one.

A. James W. and Chrystal C. Harris, property located at 613 33rd Street, designated as Lots 43, 44, and 45 in Block 211; the appraised value, \$12,187.50.

Q. All right, sir. Take the next one.

A. All right, Jerry C. Fauntleroy, Jr., 3303 Roanoke Avenue. That is Lot 6 in Block 25-A, \$6,200. He owns



another piece in Lakeville, Part Lot 13 and Lot 14 in Block 51, \$1,437.50.

Ernest C. Downing and Norvalde L. Downing, property located at 531 25th Street, Lot 13 in Block 83, \$9,100. These two pieces are owned by Ernest C. Downing: 1143 29th Street, Lot 15 in Block 5-C, \$4,600, and another piece in his name at 1229 27th Street, Lots 22 and 23 in Block 11 D, \$17,162.50.

Lewis Thompson, 1892 Ivy Avenue, Lot 224 in Block 12, \$7,187.50. Another piece at 21st Street; that is part Lot 25 and 26 in Block 18, \$3,087.50. Another piece, 624 29th Street, Lot 48 in Block 59, \$4,150.

David W. and Daisy L. Morris, property located at 1818 Marshall Avenue, Lots 1 and 2 in Ridley Place, \$16,212.50. They own another piece at 620 25th Street; that is Lots 46 and 47 in Block 67, \$37,350.

Robert L. and Fannie L. Washington, 2505 Parrish Avenue, Lot 6 and one-half of Lot 3 in Block 45-C, \$6,800.

Thomas W. Selden, 27th Street, Lot 45 in Block 105, \$650. Another piece at 3100 Madison Avenue; that is part Lots 33, 34, and 35 and Lot 46 in Block 195, \$20,925.

Percy L. and Patience Drake, 647 21st Street, Lot 14 in Block 14, \$4,112.50.

I have Reverend Alfred C. Littlejohn, property located at 845 25th Street, which is not taxable. That is church property.

[fol. 512] I have Mrs. Katherine R. Jones at 1253 44th Street, and the land book at our office does not indicate that she owns any real estate.

I have William J. and Louise S. Harley, 857 26th Street, Lots 9 and 107, \$5,125.

Cecil B. and Marie E. Patterson, 615-17 Hampton Avenue, part Lots 43 and 44 and Lots 29 and 30 in Block 13, \$35,237.50.

Davis and Mary Bradshaw, 828 31st Street, one-half of Lot 49 and 50 in Block 179, \$6,525.

William and Vivian H. Miller, 753 31st Street, Lots 11 and 12 in Block 195, \$5,687.50.

Douglas C. and Gertrude Hampton, 731 31st Street, Lot 221<sub>2</sub> and 23 in Block 195, \$4,750.

Robert and Mary Leone McDonald, 833 31st Street.  
That is Lot 21 in Block 195, \$6,662.50.

James E. and Emily Manson, 3008 Marshall Avenue,  
Lots 37 and 38 in Block 179, \$8,762.50. 3215 Roanoke  
Avenue, Lot 1 in Block 217-A, \$9,012.50. 1023 36th  
Street—

Q. This is in the name of James E. Manson?

A. This is in the name of James E. Manson. That is  
Lots 4 and 7 in the Levinson Tract, \$757.

Judge Soper: How much more of this is there?

Mr. Gravatt: There are probably eight or ten more  
names, Judge—about ten more names.

Judge Soper: Well, it doesn't mean anything to have  
him read them off, except to get them on the record.

Mr. Gravatt: That is all.

Judge Soper: I suggest that copies be given to counsel  
on the other side and that it be understood that what this  
paper shows is what this witness' testimony would be.

Mr. Gravatt: I have done that, sir, during the recess  
and they asked that I proceed in this fashion.

Judge Soper: Well, I understand, but I am rather in-  
clined to think, maybe, because it is near the end of the  
day, they have made a bad suggestion.

What is your suggestion about that?

Mr. Robinson: We will concur in the Court's sugges-  
tion.

Judge Soper: That will save time, and we don't get any  
information by having him read it.

[fol. 513] Mr. Gravatt: There is a great deal more on  
here than what he is reading.

Mr. Hill: I was going to say, there is more on the paper  
than he is testifying to.

Judge Soper: What you want are the names—

Mr. Gravatt: And the appraised value of the real es-  
tate.

Judge Soper: That is what will go in, subject to the  
exception. The rest of it will not go in.

Mr. Gravatt: May I just hand this to the Reporter with  
that understanding?

Judge Soper: Yes, sir.

Mr. Gravatt: That is all for this witness, may it please the Court.

(The remainder of the list furnished by the witness to the Reporter was as follows:)

Georgia Coppedge, 857 31st Street, Lots 8, 9, and 10 in Block 197, \$6,420.

James O. and Ida Walton, 852 31st Street, Lot 62 in Block 179, \$6,250.

A. L. and Rosa C. Price, 3012 Marshall Avenue, Lots 39 and 40 in Block 179, \$12,725.

Matdora George, 816 27th Street, Lots 45 and 46 in Block 107, \$6,512.50.

Curley and Nancy Williams, 1138 33rd Street, Lots 53 and 54 in Block 5-D, \$6,712.50.

Cross examination.

By Mr. Robinson:

Q. The appraised values concerning which you have given testimony, Mr. Rowe, are the fee simple values of the real estate without taking into consideration any mortgages, deeds of trust, or other liens against the property?

A. That is right.

Mr. Robinson: That is all.

Judge Soper: Thank you, sir.

Mr. Gravatt: May this witness be excused?

Mr. Robinson: So far as we are concerned.

[fol. 514]

September 19, 1957.

JULIAN A. SHERMAN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state to the Court your name, address, and occupation?

A. Julian A. Sherman, Horseheads, New York; I am the Eastern Representative of the Claims Research Bureau and it is a bureau of the Law Department of the Association of American Railroads.

Q. Will you outline generally the scope of your duties with the Association?

A. Under the direction of our National Director in Chicago, I supervise the research program in fifteen or twenty eastern states, including Virginia, which deals with the problems that arise from personal injury claims against railroads; I personally participate in investigations of claims; and I supervise the work of four investigators—

Judge Soper: Talk to the Court, please.

A. (Continuing) —who do most of the actual field investigations, and we do not participate in the adjustment of claims; that is the responsibility of the individual railroads. We make our findings known to the interested officials in the railroad industry and when we discover violations of the law or of the legal Canons of Ethics we report our findings to the appropriate Commonwealth's Attorney or Bar Association officials.

Q. Are you familiar with Chapters 31, 33, 35, and 36 of the Acts of the General Assembly of Virginia, Extra Session 1956?

[fol. 515] A. Yes, sir.

Q. Will you briefly discuss your familiarity with bribery, solicitation, and running and capping?

A. The solicitation of personal injury claims, and particularly those under the Federal Employers' Liability Act, against railroads is very widespread. We have found a great deal of evidence in the entire fifteen-state area where we are working. The division of fees by attorneys with laymen and the offering of other financial inducements to them to solicit business is widespread. Barratry, commonly called "running and capping," is indulged in by unethical attorneys and by a lot of laymen in their employ. In contacting prospective claimants, these runners do their best to undermine the reputation of the railroads' claim department representatives and they also indulge in criticism of ethical local attorneys so as to discourage the claimants from employing them. They criticize the medical services offered by the railroads, and allege that if the claimant will employ the attorney that they are recommending, superior medical services will be provided. It is a commonplace practice for the runners to offer maintenance, including everything from bearing the cost of litigation on down to monthly living cost payments during the pendency of these cases if the recommended lawyer will be employed.

Q: Do the activities to which you refer exist in Virginia?

A. Yes. Our recent investigations have shown us that in at least seventeen cases, well authenticated with signed statements from the claimants, or past claimants, solicitation has occurred throughout Virginia.

Q: Would the information required by Chapter 31 assist in the investigation of the activities to which you have reference?

A. Yes, sir.

Mr. Wickham: That is all.

Mr. Robinson: If Your Honors please, this is rather basic new testimony. We move to strike it on the basis that it has no relevancy to the issues before the Court.

Judge Soper: You may argue that in your brief if you want to. I think we will take it subject to exceptions.

Mr. Robinson: We have no questions.

[fol. 516] By Judge Hoffman:

Q. Mr. Sherman, with respect to your last answer, I would like to know in what degree the newly-enacted laws will materially assist you in bringing about a cessation of the common practice known as "ambulance chasing," as against the present laws and Canon of Ethics that may exist in Virginia and through the Canons of Ethics of the profession at large throughout the country, if you could amplify that somewhat.

A. I think I should begin by informing the Court that I am not an attorney, nor am I familiar with all of the statutes in Virginia that may have some bearing on this subject. However, I think that Chapter 31, in particular, of the statutes that are now being inquired into would be very helpful to us in that it requires the disclosure of financial dealings, which would serve to provide a proof of the division of fees and of maintenance, which would, I think, enable more effective prosecution under other laws and under the Canons of Ethics.

Judge Soper: All right.

[fol. 517] REBUTTAL

Mr. Robinson: Call Mr. Otis Scott. If Your Honor please, this was a witness who was brought here to testify today, has not been previously in attendance on this trial. There was also another witness brought here for the same purpose. Without our knowledge, they have been seated in the courtroom during the proceedings this morning.

Judge Soper: Well, I guess it doesn't do the defendants any harm for them to have heard their testimony. However, if there are any other witnesses whom you desire to call, I think that in accordance with the rule they should be asked to wait outside. That was our suggestion at the beginning.

Mr. Robinson: I will ask Mrs. Neal and also Mr. Martin if he is in the courtroom to step outside.



[fol. 518] Otis Scott, called as a witness by the plaintiffs, and being first duly sworn, testified in rebuttal as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Otis Scott.

Q. Can you speak up, Mr. Scott?

A. Otis Scott.

Q. Where do you live, Mr. Scott?

A. My address is Pamplin, Virginia. I live near Prospect. My address is Pamplin, Virginia.

Q. In what county is your place of residence?

A. Prince Edward County.

Q. Did you have any connection with the suit that was filed in 1951 involving the public schools of Prince Edward County?

A. I did.

Q. What was your connection with that suit?

A. Well, I had children attending the R. R. Morton School.

Q. Would you name those children?

A. It was John Scott and Walter Scott.

Q. Go right ahead, Mr. Scott.

A. And Calvin Scott. Those are the three that are attending at that time.

Q. Are you familiar with a student strike that occurred at the R. R. Morton High School?

A. I am.

Q. Do you know whether or not your children participated in that strike?

A. They did.

Q. What in consequence of the developments in Prince Edward County did you do in connection with the school situation?

Mr. Mays: Your Honors, I do not want to interrupt needlessly, but as far as I can see this is not rebuttal testimony. It seems to me to be evidence in chief. I object.

Mr. Robinson: If the Court please, I would like to state for the information of the Court and opposing counsel that

[fol. 519] the testimony of this witness is being introduced in rebuttal to the other evidence that was offered on yesterday morning by the defendants as to how counsel got to be engaged in this situation and what counsel were authorized to do, and that type of thing. The questions that I have been asking this witness were simply to lay the foundation for questioning in that regard.

Judge Soper: There were certain witnesses for the defendants who testified yesterday, the ones who signed the paper and said they didn't know what they signed, that they didn't know that their lawyers were to bring suit for purposes of integration.

By Mr. Robinson:

Q. (Continuing) Mr. Scott, removing some of the detail, let me ask you this: Did you attend any meetings that were held in Farmville during the time that the children were out on strike? Did you attend any such meetings?

A. I did.

Q. Do you recall just what meetings you did attend?

A. I remember attending a meeting one night, I don't know what night it was.

Q. Do you remember where the meeting was held?

A. The meeting was at the First Baptist Church.

Q. Do you remember whether anything was said at this meeting about what was going to be done about the school situation?

A. I remember that we as patrons wanted the advice of a lawyer.

Q. Did you seek the advice of attorneys?

A. We did.

Q. Go right ahead, Mr. Scott.

A. We sought the advice of attorneys on the schools.

Q. Did the attorneys give you advice concerning the school situation?

A. They did.

Q. Do you remember what that advice was?

A. Their advice was they wouldn't take the case up for segregated schools. If they taken the case at all it would be on a non-segregated basis.

[fol. 520] Q. Did you execute a paper authorizing attorneys to take action in behalf of your school children?

A. I did.

Q. Did you understand the purpose of the activity in Prince Edward County to be what you have just stated here?

A. I did.

Q. Did you ever change your mind with respect to what you wanted for your children?

A. I have not.

Q. Have you had an occasion to talk to the attorneys handling that situation since the meetings that were held during the week of the school strike?

A. I have.

Q. Will you state whether or not from time to time you have received communications from these attorneys requesting that you participate in conferences with them about the case?

A. Well, I can't recall the dates, but I have had that kind of communication from them.

Mr. Robinson: I think that is all.

Mr. Mays: No questions.

Mr. Robinson: I would first like to have Mrs. Viola Neal.

VIOLA NEAL, called as a witness by the plaintiffs, being first duly sworn, testified in rebuttal as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Mrs. Viola Neal.

Q. Where do you reside, Mrs. Neal?

A. Green Bay, Virginia.

Q. In what county is Green Bay?

A. Prince Edward.

Q. Were you a plaintiff in the suit—

A. I was.

Q. Just a minute. —in the suit that was brought affecting the schools of Prince Edward County?

[fol. 521] A. That's right.

Q. Did you have any children attending the R. R. Morton High School during the year 1951?

A. Yes, I did.

Q. Will you give us the names of those children?

A. Lee Emmett Neal and Katherine Grace Neal.

Q. Will you state whether or not you had occasion to seek legal advice and assistance in connection with that school situation?

A. Pardon me?

Q. Did you have an occasion to seek or ask for legal advice or representation in connection with that school situation?

A. That's right.

Q. Did you have an occasion to sign any paper of any sort authorizing attorneys to take action in your behalf?

A. Yes, I did.

Q. Will you state for the information of the Court what you understood these attorneys were supposed to do for your children and yourself?

A. I understood that they were supposed to seek this in the best of their knowledge for the welfare of my children.

Q. Did you have an occasion to attend any meetings of a public character held during the time the students were out on strike from the Morton School?

A. Yes.

Q. Was there any discussion at this meeting as to what the activities engaged in by the attorneys would be? Was there anything said about what the attorneys proposed to do about this situation?

A. Why, yes.

Q. Will you state for our information just what you recall in that connection?

A. They was supposed to represent us in the best of their knowledge.

Q. Was anything said about actively seeking an end to race segregation in Prince Edward County?

A. That's right.

Q. Did you have any misunderstanding on that score yourself?

[fol. 522] A. No, I didn't.

Q. Do you recall where the meetings to which you referred occurred?

A. Well, some of them were held in the basement of the First Baptist Church and in the Methodist Church, I believe.

Q. Any other place that you can remember?

A. One of them was held in the auditorium of the old high school.

Q. Do you recall whether or not you attended a meeting held in the auditorium of the First Baptist Church?

A. That's right, yes, I do.

Mr. Robinson: That is all.

Cross examination.

By Mr. Gravatt:

Q. Viola, do you know the date on which you signed any authority for attorneys in the case?

A. Well, I really can't recall the date.

Mr. Gravatt: Did you examine this witness with respect to the authority?

Mr. Robinson: I asked her whether she did or not.

Mr. Gravatt: May I see it?

Mr. Robinson: I have the original if you would like to see it.

By Mr. Gravatt:

Q. The authorization is dated the 26th day of April. I believe that the strike that took place in Farnville began on the 23rd day of April; is that correct?

A. I think that is correct.

Q. Had you talked with Mr. Spottswood Robinson or Mr. Oliver Hill between the 23rd of April and the 26th of April?

A. No.

Q. Had you been to any meetings other than the meeting at the school? Had you been to any meetings at which any attorney was present before the 26th day of April?

[fol. 523] A. No, I don't think so.

Q. So that this paper was signed before you ever had any conference with Mr. Hill or Mr. Robinson?

A. Oh, yes.

Q. Have you ever talked, since the 26th of April, personally with Mr. Robinson or Mr. Hill about the litigation that you were in?

A. Yes.

Q. When?

A. I just can't recall the date.

Q. Recently or in the past?

A. Recently.

Q. Since this suit was instituted?

A. Yes.

Q. And they had not discussed with you anything about that litigation until they got ready to prepare you to testify in this case, had they?

A. How's that?

Q. They had not discussed anything with you about the Prince Edward litigation until they came to you with regard to testifying in this case; is that correct?

A. No.

Mr. Gravatt: That is all.

Redirect examination.

By Mr. Robinson:

Q. Mrs. Neal, you made reference to a meeting that was held at the high school?

A. Yes.

Q. Was that meeting held during the first week that the children were out on strike?

A. Well, to be frank with you, I can't recall whether that was the first or not.

Q. You mentioned a meeting that was held in the basement of the First Baptist Church.

A. That is right.

Q. Do you remember about how long that meeting was from the meeting that was held at the high school?

A. No, I don't remember.

[fol. 524] Q. Was it a long time or was it a short time? Do you remember?



A. It wasn't a long time.

Q. I beg your pardon?

A. It wasn't.

Q. You also mentioned a meeting that was held in the auditorium of the First Baptist Church; was that meeting held a long time or a short time after the meeting that was held at the School?

A. Well, it wasn't long.

Q. Do you know Mr. Oliver W. Hill?

A. Yes.

Q. Do you know my name?

A. Yes.

Q. Did you have an occasion to talk to us? Did we have an occasion to discuss the matter of the suit with you and other parents at the meeting that was held in the basement of the First Baptist Church?

A. Yes.

Q. Did we have an occasion to discuss the suit at the meeting that was held in the auditorium of the First Baptist Church?

Mr. Mays: If Your-Honors please, this may save time, but it is leading. The last few questions have been leading and I hope he won't continue to lead.

Mr. Robinson: I will try not, Mr. Mays, but I have to ask the questions.

• By Mr. Robinson:

Q. (Continuing) You attended the meeting in the auditorium of the First Baptist Church?

A. Yes, I did.

Q. Did Mr. Hill and I have anything to do with the discussions that occurred at that particular meeting?

A. No.

Q. In the auditorium of the First Baptist Church?

A. At this meeting?

Q. Yes.

A. Yes.

[fol. 525] Q. Have you had occasion to talk to Mr. Hill and to me since these meetings to which you have just testified?

A. Yes, I have.

Q. About how many times would you say, Mrs. Neal?

A. About three times, I imagine.

Q. One final question. Will you state whether or not the meeting at the school, the meeting in the basement of the First Baptist Church, the meeting in the auditorium of the First Baptist Church—did those meetings occur before or after the suit against the school authorities was filed?

A. Afterwards.

Q. After the suit was filed?

A. What meeting are you speaking of? Let me get an understanding now. Wait a minute.

Q. The meeting at the Morton High School, the meeting in the basement of the First Baptist Church, the meeting in the auditorium of the First Baptist Church—had any suit been filed against—

Judge Soper: Excuse me, Mr. Robinson. It is quite unlikely that this woman herself would know when any suit was filed in court, I would assume. In other words, I do not think in your questions you ought to assume that she knows that date.

By Mr. Robinson:

Q. Without undertaking to say the date, do you remember when the suit was filed?

A. Well, to be frank with you, I can't remember those dates. There are so many dates mixed up here together and I would like to tell the truth about it.

Q. Let me ask you this. Do you remember whether or not when these three meetings were held, the children were still out on strike?

A. That's right.

Mr. Robinson: That is all.

Judge Soper: That is all. Thank you.

[fol. 526] GEORGE P. MORTON, called as a witness on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hill:

Q. Will you state your full name and address to the Court, please?

A. George P. Morton is my full name.

Judge Hoffman: You will have to raise your voice.

Mr. Hill: You will have to raise your voice. These judges have to hear.

A. (Continuing) My full name is George P. Morton, my address is Cullen, Virginia.

Q. What is your wife's name, Mr. Morton?

A. My wife's name is Emma H. Morton.

Q. In 1951, did you have any children attending the R. R. Morton High School in Farmville?

A. Yes, sir, two.

Q. Do you still have any children attending the Morton High School?

A. Yes, sir.

Q. Directing your attention to the latter part of April 1951, do you remember whether or not the children at the high school went out on strike?

A. Yes, sir.

Q. As a result of their being out on strike, did you attend certain meetings in Farmville?

A. Yes, sir.

Q. Can you tell us where those meetings were held?

A. They were held in the church and the schoolhouse.

Q. Talk louder. The judges can't hear you.

A. One in the church and one in the schoolhouse.

By Judge Soper:

Q. One in the church and one in the schoolhouse?

A. Yes, sir.

Judge Soper: All right.

[fol. 527]

By Mr. Hill:

Q. Were more than one held in the churches?

A. Yes, sir.

Q. Did you attend a meeting at the First Baptist Church, pursuant to a notice for attending that meeting, in which two meetings were held, one in the basement of the church and one in the auditorium of the church on the same night?

A. Mr. Mays: If Your Honor please, I think we are continuing to lead. We are willing to have a certain amount of it, and I realize Mr. Hill has been sworn when he testified, but we would rather have him testify from the chair than testify when interrogating the witness.

Mr. Hill: Okay, Mr. Mays.

By Mr. Hill:

Q. At this meeting which you say you attended in the basement of the church, who attended that meeting—just some of the people, not everybody?

A. Just the school children and parents.

By Judge Soper:

Q. Did you say the school children and their parents?

Mr. Hill: Yes, sir, that is what he said.

By Mr. Hill:

Q. Was there anyone there other than the children and their parents? If so, who were they?

A. Some more came in, but they were ordered out.

Q. And who ordered the other people out, other than the parents and the children?

A. The lawyers ordered them out.

Q. And who were the lawyers?

A. Mr. Robinson and Mr. Hill.

Q. Now, what was discussed with you at that meeting with just the parents and the children?

A. Well, what was discussed, the children had been on a strike and now they wanted a suit—wanted to bring a suit, or something, to protect them in the strike. They wanted to bring a suit, said they were tired of the school—

[fol. 528] Q. Talk louder. I can't hear you.

A. They didn't have room enough. When they changed classes, they had to go out in the rain or snow whenever it would be falling—they had to go in it.

Q. That was the complaint the children made; is that correct?

A. Yes, sir. So, now they want better schools and they said, to get better schools they would have to have a non-segregated school, and then they would have equal facilities.

Q. Who told you that to get better schools they would have to have non-segregated schools?

A. Well, that was for the advice of the lawyers, to find out what was best to do, and the parents then decided to employ lawyers, to put it in the lawyers' hands and work it out in the way they saw fit.

Q. Is it correct to say that what you have said is that at this meeting with the parents—

Mr. Mays: Don't lead him.

Mr. Hill: He mumbles so, I want to be sure the Court understands what he says.

Mr. Gravatt: Well, let him say it, not you.

Mr. Hill: Will you read the last question and answer?

(The preceding question and answer were read by the Reporter.)

By Mr. Hill:

Q. That was at the meeting from which everybody was excluded except the parents and the children. After that meeting, did you subsequently go upstairs to the auditorium of the First Baptist Church?

A. Yes, sir.

Q. Did all the people go up there?

A. Yes, sir.

Q. What was discussed at this meeting upstairs at the First Baptist Church, the second meeting, that same night? Talk loud. The judges have got to hear you. They have got to decide this.

A. They discussed that they would have to bring a suit to get a non-segregated school—a better school and less trouble.

[fol. 529] Q. That was discussed at this other meeting?

A. Yes, sir.

Q. Let me ask you this: It was in the newspapers that a suit had been filed?

A. Yes, sir, after it was filed.

Q. Since the suit was filed, have you talked with your lawyers?

A. Yes, sir, I have talked with them.

Q. On how many occasions have you talked with the lawyers since the suit was filed, just to your best recollection? Just the number, not the occasions.

A. Two or three different times.

Q. Two or three different times. Have you received a notice from the lawyers to appear at a meeting?

A. Yes, sir.

Q. When you received that notice, did you attend the meeting?

A. Yes, sir.

Q. Were the other parents of school children in Prince Edward County present at that meeting?

A. Several of them was there.

Q. At these meetings, did the lawyers discuss the case with you?

A. Yes, sir.

Q. Was your child one of the intervenors in this case?

A. Yes, sir.

Q. Did you attend a meeting with the lawyers so they could ascertain that information?

A. Yes, sir.

Q. Let me ask you this: You say your wife's name is Emma H. Morton? Is that correct?

A. Yes, sir.

Q. I show you this and ask you if you can recognize whose name is signed to it?

A. It is her name, Emma H. Morton.

Q. That is your wife's name?

A. Yes, sir.

Q. You recognize her signature?

A. Yes, sir.

Q. What are the names of the children there in school?

A. One is named George.

[fol. 530] Q. Is that the one that was in school at the time of this strike?



A. Yes, sir.

Mr. Hill: That is all. Wait a minute. These gentlemen may want to ask you some further questions.

Mr. Gravatt: Let me see that paper you have just shown the witness, Mr. Hill, please, sir.

(A paper was handed to counsel.)

Cross examination.

By Mr. Gravatt:

Q. What is your name?

A. My name?

Q. Yes.

A. George P. Morton.

Q. This paper is dated the 26th day of April and it is signed by your wife. Did you ever sign any paper?

A. No, I didn't sign it; she signed it.

Q. Were you in the suit at all?

A. Yes, sir.

Q. Were you named in the suit as a party to the suit?

A. I was a parent.

Q. Sir?

A. I was a parent of the child.

Q. You were the grandparent, weren't you?

A. Yes, sir.

Q. You were not the parent of the child, you were the grandparent?

A. Yes, sir; so was my wife.

Q. And wasn't your wife the party who employed the attorneys? You did not employ attorneys? You were not in the case, were you?

A. All the parents were there.

Q. You think you were a plaintiff?

A. Yes, sir, I thought so.

Q. These meetings that you referred to, in the church, when everybody but the parents and the children were excluded, who called that meeting? Was that meeting called [fol. 531] by the Reverend Grillin? Did you get a letter from him notifying you to be at that meeting?

A. I got a notice: The children brought the message back from school.

Judge Soper: I can't hear a word he says.

Mr. Hill: Speak up so the judge can hear you.

A. (Continuing) I say, the children from school brought the message that the meeting was going to be, and sometimes we got notice to come to a meeting.

By Mr. Gravatt:

Q. Sometimes you got notice from Reverend Griffin?

A. From somebody.

Q. And the meeting was held in his church?

A. Yes, sir.

Q. What position does Reverend Griffin hold in the NAACP Branch in Prince Edward County?

A. I don't know just exactly.

Q. He is one of the big officials, isn't he?

A. Yes, sir.

Q. That meeting you refer to, do you know when that meeting was held? How long after the strike was begun?

A. It wasn't very long after the strike.

Q. Was it a week?

A. It seems like it was less time than a week.

Q. You think it was less time than a week?

A. Yes, sir.

Q. Wasn't the meeting held on the first day of May?

A. It was held shortly after the strike.

Q. Shortly after the strike?

A. Yes, sir.

Q. You didn't sign any paper? Your wife signed it?

A. Yes, sir.

Q. And you don't know what conversations were had or what your wife understood about this suit?

A. They said to sign the paper to put the suit in for the child.

Q. For better schools?

A. Yes.

[fol. 532] Q. Is that what you all were talking about?

A. They said for non-segregated schools.

Q. You want to be a plaintiff in a suit in Prince Edward County to have the white and colored children mixed in the public schools?

A. Well, that is the only way I thought they could get equal facilities.

Q. If you get equal facilities, you are not interested in sending them to school together; is that correct?

A. Well, if they give us a school—I was a committee originally on the board for three or four years, trying to get more room and a better school.

Q. Right, and you have got a fine school there now, haven't you?

A. Well, we have got a very good school there.

Q. And, with that school, do you still want to send your children to the white school in Prince Edward?

A. Well, they didn't give us a school until we brought the suit.

Q. I understand, but you have got the school now?

A. Yes, sir.

Q. Are you satisfied with the school you have got—

Mr. Hill: May it please the Court—

Mr. Gravatt: Let me finish the question.

Mr. Hill: I submit the whole series of questions is just arguing with the witness.

Judge Soper: I don't think it has anything to do with bringing the suit—the fact that he may be satisfied with the school now.

Mr. Gravatt: My point is that this litigation resulted in the construction of a fine school.

Judge Soper: Well, it is very happy that it has, but that has nothing to do with the point. I think the objection is well taken.

Mr. Gravatt: The point is, Your Honor, if this man does not want to insist on a decree to integrate the schools, he should have at least enough control over the litigation to advise his counsel.

Judge Soper: That is not the question before the Court at this time. The question is what happened at the time of the institution of this suit. That is the only thing he was examined about.

[fol. 533] Mr. Gravatt: All right, sir. I think that it is relevant and I except to the ruling of the Court. I have no further questions.

GUY R. FRIDELL, JR., called as a witness on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hill:

Q. Mr. Fridell, directing your attention to early May 1951, at that time were you a newspaper reporter?

A. Yes, sir.

Q. Incidentally, Mr. Fridell, are you here voluntarily, or on a subpoena?

A. I was subpoenaed to come in.

Q. Did you have an assignment to cover a meeting in Farmville, Virginia, during the time of the school strike there early in May?

A. I did.

Q. Did you attend the meeting at the First Baptist Church in Farmville on May 3?

A. That's right.

Q. As a result of attending that meeting, did you write a newspaper report on it?

A. That's right; I wrote a story.

Q. Do you think you could recall some of the details of the meeting if your mind were refreshed from the newspaper article?

A. I can recall what was in the article, yes, sir.

Q. Can you recall it of your own recollection?

A. That's right.

Q. Will you state to the Court some of the people who talked to that meeting?

A. Well, you and Mr. Spottswood Robinson spoke and one of the students spoke, there was a minister who spoke; those are four persons that I remember.

Q. Will you tell the Court whether the meeting was well attended or poorly attended?

[fol. 534] A. It was well attended. The church was pretty well packed.

Q. Now, while you were there in attendance on that meeting, did you talk with parents and children also?

A. Yes. I circulated a good deal among the audience

and talked with them to find out what their feelings were and what their opinions were.

Q. Was there talk at that meeting of filing a lawsuit?

A. Yes, there was.

Q. Will you tell the Court what type or kind of lawsuit there was talk of filing?

A. Well, as I recall it, you and Mr. Robinson told the audience that you were prepared to file suits which would bring about an end to segregation. Roughly, that was it.

Q. Was that clearly stated that night, that we contemplated bringing a suit to end segregation in Prince Edward County?

A. To my recollection, it was, but I want to suggest my story simply be put in the record, because I there wrote what I saw and heard.

Q. I show you this and ask you if you can recognize this.

A. Yes, sir. That is my story.

Q. And that was the story you wrote as a result of attending this meeting?

A. That's right.

Q. Will you read that story?

A. The entire story?

Mr. Gravatt: It is not necessary to read it.

Judge Soper: I don't think it is necessary.

Mr. Gravatt: We have no objection to filing it.

Judge Soper: I understand.

Mr. Hill: Your Honor, may we file it with the request that we be permitted to withdraw it and have photostatic copies made and filed in lieu of the original?

Judge Soper: Yes, indeed. There is no objection to that.

Mr. Hill: With that understanding, we will just have it marked.

(The newspaper article referred to, marked Plaintiff's Exhibit No. 13, was filed in evidence.)

[fol. 535] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 536]

IN THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA

Present: All the Justices

Record No. 5096

---

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ETC.,

—v.—

A. S. HARRISON, JR., Attorney General of Virginia, et al.

---

Record No. 5097

---

N. A. A. C. P. LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC.,

—v.—

A. S. HARRISON, JR., Attorney General of Virginia, et al.

---

From the Circuit Court of the City of Richmond  
Edmund W. Henning, Jr., Judge

OPINION BY JUSTICE LAWRENCE W. FANSON  
Staunton, Virginia, September 2, 1960

The National Association for the Advancement of Colored People, hereinafter referred to as the NAACP, and the NAACP Legal Defense and Educational Fund, Inc., hereinafter referred to as the Fund, appellants herein, filed their separate bills of complaint in the court below against Albertis S. Harrison, Jr., Attorney General of the Commonwealth of Virginia, the attorneys for the Commonwealth of the cities of Richmond, Newport News and Norfolk, and the counties of Arlington and Prince Edward, Virginia, appellees herein, to secure a declaratory judgment construing chapters 33 and 36, Acts of Assembly, Ex. Sess., 1956, codified as §§ 54-74, 54-78, 54-79; Code of



1950, as amended, 1958 Replacement Volume, and §§ 18-349.31 to 18-349.37,<sup>1</sup> inclusive, Code of 1950, as amended, 1958 Cum. Supp., as they may affect the appellants, their [fol. 537] officers, members, affiliates of NAACP, contributors, voluntary workers, attorneys retained or employed by them or to whom they may contribute monies and expenses, and litigants receiving assistance in cases involving racial discrimination, because of the activities of the NAACP and the Fund in the past or the continuation of like activities in the future.

The NAACP, in addition to seeking a construction of the aforementioned statutes, alleged that the statutes are unconstitutional and void because their enforcement would deny to it, its affiliates, officers, members, contributors, voluntary workers, attorneys retained or employed by it, and litigants whom it may aid, due process of law and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The two suits were heard and considered together in the court below, by consent of all parties, on the appellants' bills, their exhibits, which included a transcript of the evidence, exhibits, the majority and dissenting opinions of the three-judge federal court, and the judgment entered in the case of *National Association for the Advancement of Colored People v. Patty*, 159 F. Supp. 503 (judgment vacated and remanded *sub nom. Harrison, et al. v. National Association for the Advancement of Colored People*, 360 U. S. 167, 79 S. Ct. 1025, 3 L. ed. 2d 1152); the answers and [fol. 538] exhibits of the appellees; and *ore tenus* testimony on behalf of the appellees and the NAACP, except one deposition taken on behalf of the NAACP. No testimony was taken on behalf of the Fund.

The court below held, so far as need here be stated, (1) that chapters 33 and 36 do not violate the constitutional guarantees of freedom of speech and assembly, due process of law and equal protection of the laws under the Fourteenth Amendment; (2) that the evidence shows that the appellants, their officers, affiliates, members, voluntary workers and attorneys are engaged in the improper solicitation of legal business and employment in violation of chapter 33

<sup>1</sup> Now §§ 18.1-394 to 18.1-400, 1960 Cum. Supp.

and the canons of legal ethics; (3) that attorneys who accept employment by appellants to represent litigants in cases solicited by the appellants, and in which they pay all costs and attorneys' fees, are violating chapter 33 and the canons of legal ethics; and (4) that the appellants and those associated with them advise persons of their legal rights in matters in which the appellants have no direct interest, and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, and as an inducement for such persons to assert their legal rights through the commencement of or further prosecution of legal proceedings against the Commonwealth of Virginia, any department, agency or political sub-division thereof, or [fol. 539] any person acting as an employee for either or both or any of the foregoing, the appellants furnish attorneys employed by them and pay all court costs incident thereto, and that these activities violate either chapter 33 or 36, or both.

The court's decree enumerated certain detailed activities of the appellants which do not violate chapters 33 and 36, and since they are not challenged by any of the parties hereto, they need not be stated herein.

From the decree of the chancellor we granted an appeal and *supersedeas* in each cause. They will be considered together by us, as they were in the court below, except the statutes involved will be considered separately.

The questions presented on these appeals are:

(1) Do the activities of the appellants, or either of them, amount to solicitation of business, prohibited by chapter 33?

(2) Do the activities of the appellants, or either of them, amount to an inducement to others to commence or further prosecute lawsuits against the Commonwealth, its officers, agencies, or political subdivisions, as prohibited by chapter 36?

(3) Do the provisions of either chapters 33 or 36 violate the Virginia Bill of Rights (Constitution § 12) and the Fourteenth Amendment to the Constitution of the United States?

[fol. 540] The evidence shows that the NAACP and the Fund are non-profit membership corporations organized under the laws of the State of New York with authority to operate in this Commonwealth as foreign corporations. The NAACP and the Fund functioned as one corporation with the same officers, directors and members from 1911 until 1948, when, for tax purposes and other reasons, the Fund was organized as a separate corporation.

The principal purpose of the NAACP is to eliminate all forms of racial segregation. It has been described by its counsel as a political organization for those who oppose racial discrimination.

Affiliated with the NAACP are approximately one thousand unincorporated branches operating in forty-five states and the District of Columbia. The branches are chartered by the NAACP, and, for failure of the branch officers to follow strictly the policies and directives of the national body, their charters may be revoked or their officers removed. The branches are generally grouped together in each state into an unincorporated association. In Virginia the association is known as the Virginia State Conference of NAACP Branches.

The State Conference holds annual conventions which are attended by delegates from the local branches. It takes the lead in NAACP's activities in this State under the administration of a full-time salaried executive secretary who is responsible to a board of directors. The executive secretary coordinates the activities of the branches in accordance with the policies and objectives of the Conference and the NAACP, supervises local membership and fund raising campaigns, distributes educational material dealing with racial matters, and performs many other duties.

The executive secretary, members of the legal staff, and other representatives of the State Conference make speeches before local branches and other groups for the purpose of advising those present that all segregation laws are unconstitutional and void, and urging them to challenge laws to eliminate segregation through the institution of legal proceedings which the State Conference, the NAACP and the Fund sponsor at no cost to the litigants.

The aid given litigants to initiate suits is in the form of

furnishing lawyers who are members of the legal committee of the Conference, the NAACP, and regional counsel of the Fund, the payment of court costs and other expenses of litigation.

The Conference receives financial support to defray the cost of litigation it sponsors and other expenses from the local branches, the national bodies, and contributions.

Letters and directives addressed to officers of local branches and signed by the executive secretary of the Conference, filed as exhibits by the appellees, show the plans, methods and procedures used by the NAACP to sponsor litigation in school cases.

A letter dated May 26, 1954, reads in part as follows:

"It is of utmost importance that your branch retain the leadership in all actions engaged in in your community."

In a letter dated June 16, 1954, it is said:

"The Conference is proceeding with the development of its plan and will advise you thereof as soon as this work is completed."

A confidential directive of June 30, 1955, from the president and executive secretary to local branches relative to the handling of petitions for presentation to local school boards stated in part as follows:

"Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of parents or guardians only."

"The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way. . . ."

"The Education Committee chairman will forward completed petitions to the Executive Secretary of the State Conference. . . ."

"Following the above procedure, it becomes apparent that the faster your branches act the sooner will your school board be petitioned to desegregate your schools. Every act of our branch and the State Conference officials from this point on should be considered as an emergency action, [fol. 543] and must take precedence over routine affairs—personal or otherwise."

Another directive contained in part these instructions:

"Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.

"If no plans are announced or steps taken towards desegregation by the time school begins this fall, 1955, the time for law suits has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.

"At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court."

An official report of NAACP and its Virginia Conference activities from May 17, 1954, to September 13, 1957, shows the purpose and a continuation of their method of operation as follows:

**"UP TO DATE PICTURE OF ACTION BY NAACP BRANCHES SINCE MAY 31.**

**"A. Petitions filed and replies.**

"A total of 55 branches have circulated petitions.

**"B. Where suits are contemplated.**

"Petitions have been filed in seven (7) counties/cities. Graduated negative response received in all cases.

**"C. Readiness of lawyers for legal action in certain areas.**

"Selection of suit sites reserved for legal staff.

"State legal staff ready for action in selected areas.

**"D. Do branches want legal action.**

"The majority of our branches are willing to support legal action or any other program leading to [fol. 544] early desegregation of schools that may be

suggested by the National and State Conference officers. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education."

An explanation of the above report was made by the executive secretary of the Conference as follows: The language, "Where suits are contemplated," referred to places where petitions had been denied by local school boards; "Readiness of lawyers for legal action in certain areas," meant financial aid was available; and "Selection of suits reserved for legal staff," meant that members of the legal staff would pick the places where suits would be brought.

The State Conference maintains a legal staff of fifteen members, one of whom serves as chairman without compensation for that particular service. The members of the staff are elected at the annual convention of the Conference after being nominated by a committee, which in turn receives its recommendations for candidates from the chairman of the legal staff, and there have never been additional nominations from the floor of the convention.

The members of the legal staff of the Conference are reimbursed for expenses incurred in speaking before local branches and other groups and are paid fees at the rate of \$60.00 per day for their services in cases in which [fol. 545] NAACP has interested itself, "as long as such attorneys adhere strictly to NAACP policies"; namely, that a school case must be tried as a direct attack on segregation. Every item of expense and all legal fees paid by the Conference are approved by the chairman of the legal staff, except the expenses and fees of its chairman, which are approved by the president of the Conference. One member of the legal staff testified that he entered two of the school segregation cases at the suggestion of the chairman, and that the relationship "has been so pleasant and so profitable." Only members of the legal staff are selected by NAACP to bring suits in which it has an interest, and the places for bringing such suits are selected by the chairman, who refers the case to a member of the legal staff residing in the area from which the complaining party came. Without exception, when a member of the legal staff brings a lawsuit in his community other members of the staff are associated with him.



The chairman of the legal staff of the Conference is a member of the legal committee of the NAACP, Virginia counsel for the NAACP, and its registered Virginia agent.

The NAACP is not a legal aid society. Its policy during the past several years has been not to participate in cases simply because Negroes need assistance on account of poverty. Assistance is given only in cases involving constitutional rights, and then only so long as litigants adhere to the principles and policies of the NAACP and the Conference.

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP when he requested the chairman of the legal staff to speak at a meeting of parents of certain school children. At this meeting some of the parents signed authorization forms for the chairman to represent such parents and their children in legal proceedings to desegregate the schools of that city. Other authorization forms were distributed and signed with no attorney's name appearing thereon, but the name of the chairman of the legal staff was inserted later.

In the Arlington school case, the petition presented to the local school board for desegregation of the schools was prepared by the State Conference, and most of the signatures were obtained by the vice president of the Arlington branch, who was also one of the plaintiffs in a suit later instituted. She was told by the chairman of the legal committee of the Conference and the regional counsel of the Fund that they would institute legal proceedings if the school board denied the request to desegregate the schools. [fol. 547] All authorization forms used in the school segregation cases were prepared by the chairman of the legal staff and most of them authorized the attorney named therein to associate such other attorneys as he desired. Usually, the general counsel of the NAACP and the regional counsel of the Fund are associated in the trial of cases sponsored by the Conference, even though such association is not directly authorized by the litigants.

Ordinarily a complaint is filed with the executive secretary, who refers it to the chairman of the legal staff, and the chairman, with the concurrence of the president of the

Conference, decides whether suit will be instituted. The executive secretary, however, testified that he did not refer any of the plaintiffs in the school segregation cases to the chairman of the legal staff.

Many of the litigants in school cases had no personal contact with any of the lawyers handling cases in which their names appeared as parties plaintiff, and learned of the institution of suits from newspaper accounts. Some of the litigants stated that they did not know the names of the lawyers representing them, but they did know they were NAACP lawyers.

Only one witness, out of some twenty-four litigants in school cases, testified that he would have instituted legal proceedings if the NAACP had not agreed to finance them. [fol. 548] The Fund has a small membership and no affiliates. Its financial support comes from contributions solicited by letters and telegrams from New York City. The purpose of the Fund, as stated in its certificate of incorporation, is as follows:

"(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustice by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

"(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

"(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds; and the status of the Negro in American life."

The director-counsel of the Fund is charged with the duty of carrying out the purposes set out in the charter and the policies fixed by its board of directors. He has under his direction a legal research staff of six full-time lawyers who reside in New York City but who may be assigned to places out of New York. In addition to the

full-time legal staff, the Fund has five regional counsel, including one residing in Richmond, Virginia, at an annual retainer of \$6 000. The Fund also has at its disposal social scientists, teachers of government, anthropologists and so- [fol. 549] ciologists who are used principally in cases involving school litigation.

The regional counsel of the Fund residing in Richmond, Virginia, is also a member of the legal staff of the Conference and the legal committee of the NAACP.

The Fund has been approved by the State of New York to operate as a legal aid society because of the provisions of the barratry statute of New York, but counsel stated it does not operate as such. A representative of the Fund testified in the case of the *National Association for the Advancement of Colored People v. Patton, supra*, that it furnishes legal assistance when a Conference lawyer requests it or when it is revealed from an investigation, made by the New York office through its regional counsel or one of the lawyers on the State Conference staff, that discrimination exists because of race or color. All costs and expenses incurred in such suits brought on behalf of Negroes are borne by the Fund. The assistance given may be in the form of providing lawyers to assist Conference staff lawyers in the trial of a case, or in the preparation of briefs.

Most of the litigants in the school segregation cases brought in this State were financially able, according to the standards set by the Fund, to finance their own proceedings.

The appellants contend that chapters 33 and 36 are: (1) penal statutes and should be strictly construed; (2) [fol. 550] that the statutes are vague and ambiguous; (3) that the language of the statutes cannot be construed to apply to their activities; and in addition the NAACP says (4) if the statutes are construed to apply to their activities they are unconstitutional and void because they deny to it, its officers, employees, members, contributors, affiliates and attorneys the rights of freedom of speech and assembly, equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution of the United States.

Chapter 33 amends and re-enacts §§ 54-74, 54-78 and 54-79, Code of 1950. The pertinent parts of the chapter, with the amended parts in italics, are set out in the margin below.<sup>2</sup> These sections deal with solicitation of any legal or professional business or employment, either directly or indirectly, and provide for the disbarment of attorneys guilty of "malpractice, or [of] any unlawful or dishonest or unworthy or corrupt or unprofessional conduct."

<sup>2</sup> Be it enacted by the General Assembly of Virginia:

1. That §§ 54-74, 54-78 and 54-79 of the Code of Virginia be amended and reenacted as follows:

§ 54-74.

(6) "Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct", as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, *or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this chapter*, or the failure, without sufficient cause, within a reasonable time after demand, of any attorney at law, to pay over and deliver to the person entitled thereto, any money, security, or other property, which has come into his hands as such attorney; *provided, however, that nothing contained in this Article shall be construed to in any way prohibit any attorney from accepting employment to defend any person, partnership, corporation, organization or association accused of violating the provisions of Article 7 of this chapter.*

§ 54-78. As used in this article:

(1) A "runner" or "capper" is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State *or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law, or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, part-*

[fol. 551] The 1956 amendment to 54-74, subsection (6), broadens the definition of "malpractice" to include the acceptance of employment from any person, partnership, corporation, organization or association with knowledge that such person, etc., has violated any provision of article 7, chapter 4, title 54, Code of 1950, ( 54-78 to 54-83, inclusive).

The amendment to 54-78 broadens the definition of "runner" or "capper" to include any person, association or corporation acting as an agent for another person, asso- [fol. 552] ciation or corporation who or which employs an attorney in connection with any judicial proceeding in which such person, association or corporation is not a party and has no pecuniary right or liability therein.

The amendment to 54-79 broadens the offense specified which theretofore made it unlawful for any person, corporation, partnership or association to act as a runner or capper for an attorney at law or to solicit any business for him, to make it unlawful for a person, association or

---

*nership, corporation, organization or association is employed, retained or compensated.*

*The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit or procure business for such person, partnership, corporation, organization or association, or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.*

(2) An "agent" is one who represents another in dealing with a third person or persons.

§ 54-79. It shall be unlawful for any person, corporation, partnership or association to act as a runner or capper \* as defined in 54-78 to solicit any business for \* an attorney at law or such person, partnership, corporation, organization or association, in and about the State prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, ~~city~~ and county receiving hospitals, county hospitals, police courts, ~~county~~ county courts, municipal courts, \* courts of record, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution, or upon private property of any character whatsoever.

corporation to solicit any business for an attorney at law or any other person, corporation or association.

Violations of § 54-79 are made misdemeanors, and the license of any attorney violating any of the provisions of chapter 33 is subject to revocation or suspension.

While it is true that penal statutes are to be strictly construed, yet in construing such statutes the intention of the legislature must govern, and such intent may be found by giving to the words used their ordinary and usual meaning. *Tiller v. Commonwealth*, 193 Va. 418, 420, 69 S. E. 2d 441, 443; *Northrop & Wickham v. Richmond*, 105 Va. 335, 339, 53 S. E. 962, 963; *Gates & Son Co. v. Richmond*, 103 Va. 702, 706, 707, 49 S. E. 965, 966.

We find no vagueness or ambiguity in the language of chapter 33. The words used are clear and definite in their meaning.

[fol. 553] It is clear from the language of the act that the intent and purpose of the legislature in amending and re-enacting chapter 33 was to strengthen the existing statutes to further control the evils of solicitation of legal business for the benefit of attorneys by a person who is not a party to a proceeding and in which he has no pecuniary right or liability. Solicitation of legal business has been considered and declared from the very beginning of the legal profession to be unethical and unprofessional conduct.

There is no merit in the contention of the appellants that the statutes cannot be construed to apply to their activities. When we apply the plain language and meaning of the statutes to the evidence, it is perfectly manifest that the NAACP, its Virginia Conference, its branches and the Fund are engaged in the unlawful solicitation of legal business for their attorneys, in which resulting litigation they are not parties and have no pecuniary right or liability, in violation of chapter 33.

The declared purpose of the NAACP and the Fund is to eradicate every form of racial discrimination. To accomplish this objective the NAACP has organized Negroes throughout the Commonwealth into branches, and formed a legal staff for the purpose of directing and controlling all actions pertaining to racial matters. Members of the



NAACP, representatives of the Conference and its legal [fol. 554] staff appear before the membership of local branches and other groups in communities in which the organizations wish suits to be brought and by persuasive methods urge those present to assert their constitutional rights to eliminate racial discrimination by becoming parties plaintiff to legal proceedings, when many of the prospective litigants have had no previous thought of doing so. The services of attorneys selected by the NAACP, its Conference and the Fund are offered at no cost to the prospective litigants as an inducement to institute suits. The litigants and attorneys, however, must adhere to a policy of permitting the NAACP, the Conference and the Fund to direct and control the litigation.

The absence of the usual contact between many of the litigants and the attorneys instituting proceedings is indicative of the control of the litigation by the NAACP and the Conference.

Since the appellants do not operate as legal aid societies, the financial ability of litigants to prosecute their own cases is not considered by the NAACP, the Conference and the Fund in soliciting litigants. A person does not have to be indigent for the NAACP, the Conference and the Fund to pay all costs of litigation.

The communications and activities of the NAACP, the Conference and branches, indicate their plans, methods and procedures in obtaining litigants, and may be summarized as follows:

[fol. 555] \* \* \* \* \* Mr. Thurgood Marshall, chief legal counsel of the NAACP, has said that the hardest job his staff has had in bringing equal-education suits has been to persuade Negro teachers and representative Negro parents to stand as plaintiffs. \* \* \* \* \* (*The National Association for the Advancement of Colored People: A Case Study in Pressure Groups*, St. James, Exposition Press, Inc., at p. 107.)

In short, the activities of the NAACP, its Conference and the Fund clearly show that they are engaged in fomenting and soliciting legal business in which they are not parties and have no pecuniary right or liability, and

which they channel to the enrichment of certain lawyers employed by them, at no cost to the litigants and over which the litigants have no control.

There was evidence on behalf of the Fund in the record of the case of the *National Association for the Advancement of Colored People v. Patti*, *supra*, heard by the three-judge Federal court, and filed as a part of the record in these causes, that it participates in cases only when a prospective litigant appears and requests assistance. However, that does not appear to be the case under the additional evidence taken in these causes, much of which was heard *ore tenus* by the court below. Legal business is solicited by the NAACP, representatives of the Conference and its legal staff, of which the regional counsel for the Fund is a member, and he and the Fund are fully acquainted with methods and procedures used to obtain [fol. 556] litigants to whom the Fund gives assistance. The evidence shows that the regional counsel of the Fund is usually associated with Conference lawyers in school segregation cases, although he is not generally named in the authorization or power of attorney to institute suit.

There is no merit in the appellants' argument that their activities are not what are commonly considered by the legal profession as solicitation of business contrary to the canons of legal ethics. They rely on several cases which are readily distinguishable under the facts from these causes now before us. Typical of the cases cited is *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. 2d 602, 132 L. R. 1165.

In the *Gunnels* case the court upheld the right of the Atlanta Bar Association to furnish counsel to persons who had been victims of sharp loan practices. The attorneys did not receive compensation for their services and the Bar Association did not stand between counsel and client or exercise control over the litigation. The usual and proper relationship of attorney and client existed in that case, which does not exist under the evidence in the causes now before us.

In referring to the relationship that should exist between attorney and client, in the case of *Richmond Ass'n of Credit Men v. Bar Association*, 167 Va. 327, 189

S. E. 153, this Court quoted with approval the following (167 Va. at p. 335, 189 S. E. at p. 157):

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client." *Re Co Operative Law Co.*, 198 N. Y. 479, 92 N. E. 45, 16, 32 L. R. A. (N. S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879."

The acceptance of employment by an attorney in cases which the NAACP, its Conference and branches act as intermediaries in the solicitation of legal business not only violates chapter 33, but also canons 35 and 47 of the canons of professional ethics adopted by this Court on October 21, 1938, 171 Va. p. xxxii.

Canon 35 reads in part as follows:

"*Intermediaries.*—The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries." 171 Va. p. xxxii.

[fol. 558] Canon 47 reads as follows:

"*Aiding the Unauthorized Practice of Law.*—No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." 171 Va. p. xxxv.

In the Ninth Annual Report of the Virginia State Bar, p. 39, is found an opinion, rendered by the Committee on Unauthorized Practice, which is pertinent in these causes. A union retained an attorney on a salary basis to represent

all of its individual members in their claims for compensation before the State Industrial Commission. He received no fees from the individuals for such representation. His sole compensation came from the salary paid him by the union. The committee held that the union was engaged in the practice of law without a license; that it was intervening between the attorney and his clients; and that the attorney was violating the canons of legal ethics.

Courts from other jurisdictions have held that corporations or associations carrying on activities somewhat similar to those of the appellants' were engaged in the illegal practice of law and their attorneys were violating the canons of legal ethics.

*In re Maclub of America, Inc.*, 295 Mass. 45, 3 N. E. 2d 272, 105 A. L. R. 1360, an automobile association had been formed for the purpose of furnishing its members with lists [fol. 559] of attorneys who would perform services for such members free of charge. The attorneys looked to the association for payment, but the association took no part in the direction or control of the case. The court held that the association was engaged in the illegal practice of law; that the relationship of attorney and client did not exist between the association's members and the attorney; that the particular attorney was compensated by the association and subject to its instructions; that the association possessed the right to hire and fire; and that the practice was considered a contract to furnish legal assistance rather than a contract to pay for legal assistance.

*In People ex rel. Courtney v. Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823, 826, a corporation was organized to permit united protection of certain taxpayers in matters of taxation and legislation. The owners of real estate were invited to become members by the payment of a fee. Attorneys were selected and paid by the corporation to represent it in taxation litigation and the corporation would determine what questions would be litigated. The court held that, even though suits were brought in the names of individual members, and fees would have cost an individual approximately \$200,000, the corporation was engaged in the illegal practice of law.

For other cases, see *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1 (a non-profit corporation); *Doughty v. Grills*, 37 Tenn. App. 63, 260 S. W. 2d 379; *Hildebrand v. State Bar of California*, 36 Cal. 2d 504, 225 P. 2d 508; *Atchison, Topeka & Santa Fe Railway Co. v. Jackson* (10 Cir.), 235 F. 2d 390, 393; *Le v. Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N. E. 2d 163, 167.

The appellants also argue that because they are aiding others in asserting their constitutional rights chapter 33 should not be construed to limit their activities. This argument is without merit. Statutes enacted by the General Assembly in the public interest to regulate the practice of law cannot be violated, and canons of legal ethics should not be ignored simply because constitutional rights are asserted. The law provides a procedure for one to follow in asserting his constitutional rights, as well as all other legal rights, and the objective may be achieved without violating statutes and the standards of the legal profession.

The NAACP next contends that chapter 33 is unconstitutional and void because it violates the rights of freedom of speech and assembly, and denies to it, its affiliates, officers, employees, voluntary workers, attorneys and contributors due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. There is no merit in this contention.

(fol. 561) In support of the argument that chapter 33 violates their rights of freedom of speech and assembly, protected under the First Amendment and guaranteed by the Fourteenth Amendment to the Constitution of the United States, they rely on such cases as *Watkins v. United States*, 354 U. S. 178, 77 S. Ct. 1173, 1 L. ed. 2d 1273; *Swiecz v. State of New Hampshire*, 354 U. S. 234, 77 S. Ct. 1203, 1 L. ed. 2d 1311; and *Thomas v. Collins*, 323 U. S. 516, 65 S. Ct. 515, 89 L. ed. 430.

In the *Watkins* case, *supra*, a congressional committee inquired of a witness as to his past associations and he refused to identify his associates during that period on the ground that he did not believe they were now identified



with the Communist Party and the questions asked were "outside the proper scope of the committee's activities." On appeal from his conviction for contempt, the Supreme Court held that the pertinency of the question had not been shown; that Congress had not authorized the committee to make an investigation of this nature; and that a conviction for contempt for refusal to answer could not be sustained.

In *Sweezy v. State of New Hampshire, supra*, the witness, a teacher in the State university, refused to tell a committee of the state legislature the substance of a lecture he had given at the university, or anything about his opinions and beliefs, on the grounds that the questions [fol. 562] were not pertinent to the inquiry and infringed on his freedom of speech, protected under the First Amendment. The court held that the witness was not in contempt, since the resolution of the legislature authorizing the inquiry was not broad enough to permit the question.

Obviously, the holdings in the *Watkins* and *Sweezy* cases have no application here, since the court's decisions rested on the relevancy and pertinency of the questions asked by the committees.

It is true that under the holding in the case of *Thomas v. Collins, supra*, representatives of the NAACP and the Conference have a right to peaceably assemble with the members of the branches and other groups to discuss with and advise them relative to their legal rights in matters concerning racial segregation. But under the evidence of the causes before us the appellants and their associates go beyond that. They solicit prospective litigants to authorize the filing of suits by NAACP and Fund lawyers, who are paid by the Conference and controlled by NAACP policies, in violation of chapter 33.

Chapter 33 does not deny the appellants, or those associated with them, freedom to speak and assemble. The purpose and intent of the chapter is to regulate the practice of law and to bring such practice in harmony with the ethical standards of the profession. It prohibits, under certain circumstances, the solicitation of legal business. [fol. 563] The prohibition of solicitation of legal business



is merely a regulation in the interest of the public and the legal profession.

A State, under its police power, has the right to require high standards of qualifications and ethical conduct from those who desire to practice law within its borders (*Bradwell v. Illinois*, 83 U. S. (16 Wall.) 130, 139, 21 L. ed. 442; *Schwartz v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232, 77 S. Ct. 752, 756, 1 L. ed. 796, 64 A. L. R. 2d 288), and it may revoke or suspend the license to practice law of attorneys who are guilty of unethical conduct. *Richmond Association of Credit Men v. Bar Association*, 167 Va. 327, 334-336, 189 S. E. 153, 157; *Campbell v. Third District Committee*, 179 Va. 244, 249, 250, 18 S. E. 2d 883, 885.

A statute which forbids laymen to solicit employment for attorneys, or engage in the business of furnishing attorneys to render legal services, is a valid police regulation not violative of any constitutional restriction. *McCloskey v. Tobin*, 252 U. S. 107, 40 S. Ct. 306, 64 L. ed. 481; *Hightower v. Detroit Edison Co.*, 262 Mich. 1, 247 N. W. 97, 86 A. L. R. 509; *Kelley v. Bogue*, 239 Mich. 204, 214 N. W. 316, 53 A. L. R. 273; *Chicago B. & Q. R. Co. v. Davis*, 111 Neb. 737, 197 N. W. 599, 601; 14 C. J. S., Champerty and Maintenance, § 35, p. 381; Anno. 53 A. L. R., p. 279-280.

We shall now direct our attention to chapter 36 (§§ 18-[fol. 564] 349.31 to 18-349.37, inclusive, Code of 1950, as amended, 1958 Cum. Supp.) Acts of Assembly, Ex. Sess. 1956, p. 37, the pertinent parts of which are printed in the margin.<sup>3</sup>

<sup>3</sup> Be it enacted by the General Assembly of Virginia:

1. § 1.(a) It shall be unlawful for any person not having a direct interest in the proceedings, either before or after proceedings commenced:

to promise, give or offer, or to conspire or agree to promise, give or offer, or

to receive or accept, or to agree or conspire to receive or accept, or to solicit, request or donate,

Any money, bank note, bank check, chose in action, personal services or any other personal or real property, or any other thing of value, or any other assistance as an inducement to any person to commence or to prosecute further any original proceeding in

This chapter, like chapter 33, deals with the regulation and supervision of the practice of law and is a valid legislative enactment under the State's police power unless it invades rights protected and guaranteed by the State and Federal Constitutions.

[fol. 565] The NAACP contends that the chapter is unconstitutional and void because it violates the rights of freedom of speech and assembly and denies to it, its officers, employees, voluntary workers, attorneys and contributors due process of law and the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

---

any court of this State, or before any board or administrative agency within the said State, or in any United States court located within the said State against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing; provided, however, this section shall not be construed to prohibit the constitutional right of regular employment of any attorney at law, for either a fixed fee or upon a contingent basis, to represent such person, firm, partnership, corporation, group, organization or association before any court or board or administrative agency.

(b) It shall be unlawful for any person, not related by blood or marriage or who does not occupy a position of trust or a position in loco parentis to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing.

(c) As used in this act, "person" includes person, firm, partnership, corporation, organization or association; "direct interest" means a personal right or a pecuniary right or liability.

(e) (sic) Any person violating any of the provisions of § 1 of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both.

§ 6. This act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney

On the other hand, the appellees say that the chapter does not violate any constitutional guarantees, and that under the evidence the appellants have violated the statute, which is merely a common law definition of maintenance with the recognized exceptions.

[fol. 566] Section 4(a) of the act makes it unlawful, with certain exceptions, for any person not having a "direct interest" in a legal proceeding to promise, give, offer, donate money, personal services, or any other thing of value, or "any other assistance as an inducement to any person to commence or to prosecute further any original proceeding in any court of this State, or before any board or administrative agency within the said State, or in any United States court located within the said State against the Commonwealth of Virginia," its agencies or political subdivisions, or any officer or employee thereof. (Emphasis added.)

Section 1(b) makes it "unlawful for an person, not related by blood or marriage or who does not occupy a position of trust or a position in loco parentis to one who

---

does not protect the client from payment of the costs and expense of litigation, nor shall this act apply to a mandamus proceeding against the State Comptroller, nor shall this act apply to any matter involving zoning, annexation, bond issues, or the holding or results of any election or referendum, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this act apply to suits involving the equality of assessment or collection of taxes or the rates thereof, nor shall this act apply to suits involving rates or charges or services of common carriers or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceeding to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional right of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this State. The provisions hereof shall not affect the right of a lawyer in good faith to advance expenses as a matter of convenience but subject to reimbursement.

4. Maintenance is "an officious intermeddling in a suit that in no way belongs to one by maintaining or assisting either party with money or otherwise to prosecute or defend it." 4 Blackstone's Commentaries, p. 135. See also 10 Am. Jur. Champerty and Maintenance, § 1, p. 549.

becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, to *advise, counsel or otherwise instigate* the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing." (Emphasis added.)

We have frequently said that the test of the constitutional [fol. 567] validity of a law is not merely what has been done under it, *but what may by its authority be done*. *Edwards v. Commonwealth*, 191 Va. 272, 285, 60 S. E. 2d 916, 922; *Richmond v. Carnival*, 129 Va. 388, 393, 106 S. E. 403, 405, 14 A. L. R. 1341; *Violet v. Alexandria*, 92 Va. 561, 574, 23 S. E. 909, 913, 31 L. R. A. 382.

Under § 1(a) a friend or neighbor of a poor man is prohibited from aiding him in asserting his claim against the Commonwealth, its agencies or political subdivisions, if his claim does not fall within the exceptions enumerated in § 6 of chapter 36, no matter how meritorious it may be. The law has always recognized the right of one to assist the poor in commencing or further prosecuting legal proceedings. To deny this right would be oppressive and enable the other party, if his means so permits, an advantage over one with little means. Aiding the indigent is one of the generally recognized exceptions to the law of maintenance. *Gilman v. Jones* (Ala.), 5 So. 785, 786-787; *Rice v. Farrell*, 129 Conn. 362, 28 A. 2d 7, 9; 14 C. J. S., Champerty and Maintenance, § 24, p. 368; 4 Blackstone's Commentaries, ch. 10, pp. 435 et seq.

This section denies to an indigent person free access to the courts, both State and Federal, except those within the enumerated class under § 6 of chapter 36 which is a [fol. 568] fundamental right of all men, and denies to him due process of law.

A person who desires to aid an indigent suitor, unless his case falls within the excepted class, is deprived, under the terms of the act, of his fundamental right to use his property in a lawful manner and is made criminally liable if he does give such aid.

Where the principle of free discussion is concerned, it is the statute and not the accusation or the evidence under it which prescribes the limits of permissible conduct. *Thorhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. ed. 1093.

Under § 1(b) of the act, no person or association, including the appellants, except those within the excepted classification, may advise or counsel any person or group with respect to instituting or prosecuting actions against the State, its agencies or political subdivisions, or their officers or employees, to assert what these persons or groups may believe are their legal or constitutional rights. Nor may the appellants render financial aid to these people in such litigation, even though the litigants may select and employ counsel of their own choosing, in accordance with the recognized canons of legal ethics.

This section denies the right of freedom of speech, guaranteed by the Virginia Bill of Rights (Constitution [fol. 569] § 12), secured by the First Amendment to the Constitution of the United States and guaranteed by the Fourteenth Amendment which give one the right to hold views on all controversial questions, to express such views, and to disseminate them to persons who may be interested, and neither the Federal nor State government can take any action which might prevent such free and general discussion of public matters as may seem to be essential to prepare people for an intelligent exercise of what they may consider to be their rights as citizens. See 16 C. J. S., Constitutional Law, § 213(1), pp. 1093, 1094, and the many cases there cited.

A State may forbid one to practice law without a license, but it cannot prevent an unlicensed person from making a speech before an assembly, telling them of their rights and urging them to assert same. See *Thomas v. Collins*, *supra* (concurring opinion, 323 U. S. 516, p. 544, 65 S. Ct. 315, 89 L. ed. 430).

State statutes must be specifically directed to acts or conduct which overstep legal limits, and not include those which keep within the protected area of free speech. *Edwards v. Commonwealth*, *supra* (191 Va. at p. 285, 60 S. E. 2d at p. 922).



While the appellants, and those associated with them, cannot solicit and channel legal business to attorneys whom they pay, and who are subject to their directions, in violation of chapter 33, a statute which prohibits them from advising any person or group to institute suits for the purpose of asserting what they believe to be their legal rights in a denial of the right of freedom of speech, and is unconstitutional and void.

Section 1(b) not only violates the right of freedom of speech, but § 6 of the act exempts from its operation a host of potential litigants, and says in effect that what is a criminal act when done by unexcepted litigants, including the appellants, is not a criminal act when done by excepted litigants. There is no reasonable basis for excepting a great number of litigants from the application of the act while making it applicable to others. Thus it denies to the unexcepted litigants the equal protection of the laws.

Equal protection of the laws, guaranteed under the Fourteenth Amendment, does not preclude a State from resorting to classification for purposes of legislation, but such classification must be reasonable and not arbitrary, and rest on some ground of difference or distinction which bears a fair and substantial relation to the subject or object of legislation, so that all persons similarly situated shall be treated alike. *C. I. T. Corp. v. Commonwealth*, 153 Va. 57, 68, 149 S. E. 525, 526; *Bryce v. Gillespie*, 160 Va. 137, 143, 168 S. E. 653, 655.

[fol. 571] For the reasons given, we hold:

(1) That chapter 33 is a valid regulation of the practice of law, enacted under the police power of the State, and is not violative of any constitutional restrictions;

(2) That the solicitation of legal business by the appellants, their officers, members, affiliates, voluntary workers and attorneys, as shown by the evidence, violates chapter 33 and the canons of legal ethics;

(3) That the attorneys who accept employment by appellants to represent litigants in suits solicited by the appellants, or those associated with them, are violating chapter 33 and the canons of legal ethics;



(4) That chapter 36 is unconstitutional and void because it violates the right of freedom of speech under both the State and Federal Constitutions, and denies due process of law and equal protection of the laws under the Fourteenth Amendment. Therefore,

(a) The appellants and those associated with them may not be prohibited from acquainting persons with what they believe to be their legal rights and advising them to assert their rights by commencing or further prosecuting a suit against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee of such, but in so advising [fol. 372] persons to commence or further prosecute such suits the appellants, or those associated with them, shall not solicit legal business for their attorneys or any particular attorneys; and

(b) The appellants and those associated with them may not be prohibited from contributing money to persons to assist them in commencing or further prosecuting such suits, which have not been solicited by the appellants or those associated with them, and channeled by them to their attorneys or any other attorneys.

The decree appealed from is affirmed in part, reversed in part, and remanded for the entry of a decree consistent with the views expressed herein.

Affirmed in part; reversed in part; and remanded.

[fol. 573]

IN THE SUPREME COURT OF APPEALS OF THE  
COMMONWEALTH OF VIRGINIA IN THE CITY OF STAUNTON

Record No. 5096

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, a corporation, Appellant,

against

ALBERTIS S. HARRISON, JR., Attorney General of Virginia;  
T. GRAY HADDON, Commonwealth's Attorney for the City  
of Richmond, Virginia; WILLIAM L. CARLETON, Com-  
monwealth's Attorney for the City of Newport News,  
Virginia; LINWOOD B. TABB, Commonwealth's Attorney  
for the City of Norfolk, Virginia; WILLIAM J. HASSAN,  
Commonwealth's Attorney for the County of Arlington,  
Virginia; and FRANK N. WATKINS, Commonwealth's At-  
torney for the County of Prince Edward, Virginia,  
Appellees.

JUDGMENT—September 2, 1960

Upon an appeal from and supersedeas to a decree en-  
tered by the Circuit Court of the City of Richmond on the  
25th day of February, 1959.

This day came again the parties, by counsel, and the  
court having maturely considered the transcript of the  
record of the decree aforesaid and arguments of counsel,  
is of opinion, for reasons stated in writing and filed with  
the record, that there is error only in part of the decree  
appealed from. It is therefore adjudged, ordered and  
decreed that the said decree, in so far as it holds that  
Chapter 33, Acts of Assembly, Extra Session, 1956, is a  
constitutional and valid enactment, and that the appellant  
and those connected with it in carrying out the activities  
of the appellant are in violation of the provisions of this  
chapter, be, and the same is hereby affirmed.

It is further adjudged, ordered and decreed that the  
said decree, in so far as it holds that Chapter 36, Acts of

Assembly, Extra Session, 1956, is a constitutional and valid enactment, be, and the same is hereby reversed and annulled, and the cause is remanded to the said circuit court for the entry of a decree consistent with the views expressed in the said written opinion of this court.

And the appellees having substantially prevailed, it is further adjudged, ordered and decreed that the appellant pay to the appellees their costs by them expended about their defense herein.

Which is ordered to be certified to the said circuit court. [fol. 574] Petition for rehearing covering 12 pages filed September 30, 1960 omitted from this print.

It was denied, and nothing more by order October 12, 1960.

[fol. 575]

IN THE SUPREME COURT OF APPEALS OF THE  
COMMONWEALTH OF VIRGINIA, RICHMOND

Record No. 5096

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, a corporation, Appellant,

against

ALBERTIS S. HARRISON, JR., Attorney General of  
Virginia, et al., Appellees.

ORDER DENYING PETITION FOR REHEARING—October 12, 1960

On mature consideration of the petition of National Association for the Advancement of Colored People, a corporation, appellant, to set aside the decree entered herein on September 2, 1960, and grant a rehearing thereof, the prayer of the said petition is denied.

[fol. 576] Clerk's Certificate to foregoing transcript (omitted in printing).

[fel. 577]

## SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1960

N. A. A. C. P., Etc., Petitioner,

v.

ALBERTIS S. HARRISON, JR., Attorney General of  
Virginia, et al.ORDER EXTENDING TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI—January 3, 1961

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

January 31, 1961.

Felix Frankfurter, Associate Justice of the Supreme  
Court of the United States.

Dated this Third  
day of January, 1961.

[fol. 578]

## SUPREME COURT OF THE UNITED STATES

No. 689—October Term, 1960

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, etc., Petitioner,

vs.

A. S. HARRISON, JR., Attorney General of  
Virginia, et al.

## ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the Supreme court of Appeals of the Commonwealth of Virginia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 579]

## SUPREME COURT OF THE UNITED STATES

No. 689—October Term, 1960

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, etc., Petitioner,

vs.

A. S. HARRISON, JR., Attorney General of Virginia, et al.

## ORDER OF SUBSTITUTION—June 19, 1961

On Consideration of the motion to substitute Frederick T. Gray in the place of Albertis S. Harrison, Jr., Henry D. Garnett in the place of William J. Carlton, and Alfred W. Whitehurst in the place of Linwood B. Tabb, Jr., as the parties respondent,

It Is Ordered By this Court that the said motion be, and the same is hereby, granted.

LIBRARY  
SUPREME COURT, U. S.

Office Supreme Court, U.S.

FILED

JAN 31 1961

THOMAS E. SHAWING, Clerk

IN THE

**Supreme Court of the United States**

October Term, 1960

No. ~~60-1~~ 5

NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC.,

*Petitioner,*

*v.*

A. S. HARRISON, JR., Attorney General of Virginia, et al.

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF APPEALS OF VIRGINIA**

ROBERT L. CARTER,  
20 West 40th Street,  
New York 18, New York,

OLIVER W. HILL,  
214 East Clay Street,  
Richmond 19, Virginia,

*Attorneys for Petitioner.*

HERBERT O. REID,  
*of Counsel.*



Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287 .....	11
Pierre v. Louisiana, 306 U. S. 354 .....	11
Raley v. Ohio, 360 U. S. 423 .....	7
Royal Oak Drain. Dist. v. Keefe, 87 F. 2d 786 (6th Cir. 1937) .....	19
St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 .....	11
Schware v. Board of Bar Examiners, 353 U. S. 232 .....	13
Shanks Village Committee against Rent Increases v. Cary, 103 F. Supp. 566 (S. D. N. Y., 1952) ...	18, fn 18
Shelton v. Tucker, — U. S. —, 29 L. W. 4058, dec. Dec. 12, 1960 .....	16, 18, fn 19
Smith v. Allwright, 321 U. S. 649 .....	14
Spano v. New York, 360 U. S. 315 .....	11
Stark v. Wickard, 321 U. S. 288, 310 .....	14, 18
Sweatt v. Painter, 339 U. S. 629 .....	14
Talley v. California, 362 U. S. 60 .....	16
Terral v. Burke Construction Co., 257 U. S. 529 .....	19
Theard v. United States, 354 U. S. 278 .....	19
Truax v. Corrigan, 257 U. S. 312 .....	19
Vita-phone Corp. v. Hutchison Amusement Co., 28 F. Supp. 526 (D. Mass. 1939) .....	19
Watts v. Indiana, 338 U. S. 49 .....	11
Williamson v. Le Optical of Oklahoma, 348 U. S. 483 .....	13

### Constitution Cited

#### United States:

Thirteenth Amendment .....	13
Fourteenth Amendment .....	6, 10, 11, 13
Fifteenth Amendment .....	6, 13

## Statutes, Texts and Miscellaneous Citations

PAGE

### Canons of Professional Ethics (1938):

Canon 35 .....	12
Canon 47 .....	12

Opinion 148, Committee on Professional Ethics and Grievances, A. B. A. (1935) .....	14, 17, fn 7
---	--------------

Opinion 282, Committee on Professional Ethics and Grievances, A. B. A. (1950) .....	14
---	----

### Code of Virginia as Amended:

Section 54-74 .....	2
Section 54-78 .....	4
Section 54-79 .....	5

### United States Code, Title 28:

Section 1257(3) .....	2
-----------------------	---

Note, 3 R. R. L. Rep. 1257 (1958) .....	14, 15, 20
---	------------

58 Yale L. J. 574 (1949) .....	14, 18, fn 12
--------------------------------	---------------

Bunche, R., Scottsboro Defense Committee .....	17, fn 11
--	-----------

Church, S. H., "Trade Unionism and Crime", New York Times, Oct. 1, 1922 .....	17, fn 6
---	----------

Jaffe, "Judicial Review: Constitutional and Jurisdiction Fact", 70 <i>Harv. L. Rev.</i> .....	11
---	----

"Programs, Ideologies and Tacits and Achievements of Negro Betterment and Inter-Racial Organizations" .....	17, fn 11
---	-----------

Radin, "Maintenance by Champerty", 24 <i>Calif. L. Rev.</i> 48 (1935) .....	19
---	----

Schlesinger, A. M., <i>Crisis of the Old Order</i> (1957), pp. 113, 149 .....	17, fn 8, 17, fn 11
---	---------------------

Smith, R. H., <i>Justice and the Poor</i> (1921), p. 134 .....	17, fn 9, 18, fn 15
--	---------------------

American Committee for the Protection of Foreign Born .....	18, fn 20
American Committee for the Defense of Puerto Rican Political Prisoners .....	17, fn 9
"Judicial Administration and the Common Man", 287 <i>Annals</i> , pp. 34-41, 43-52, 110-119, 120-126 (1953) .....	19
"Lagging Justice", 328 <i>Annals</i> , passim (1960) .....	20
Letter of Gordon M. Tiffany, Staff Director of United States Commission on Civil Rights to Senator Jacob K. Javits .....	14, fn 4
Nat'l Assn. of Manufacturers' publication, "The Crime of the Century and Its Relation to Politics", p. 24 .....	17, fn 6
National Committee for the Defense of Political Prisoners, "News You Don't Get", published January 3 and August 11, 1936, April 27 and May 5, 1938 .....	17, fn 6, 17, fn 9, 18, fn 13, 18, fn 20
New York Times Articles, "Champion of Indians, March 3, 1958 .....	18, fn 12

IN THE

# Supreme Court of the United States

October Term, 1960

No.

— 0 —

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ETC.,

*Petitioner.*

v.

A. S. HARRISON, JR., Attorney General of Virginia, *et al.*

— 0 —

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered on September 2, 1960, in the above-entitled cause.

### Opinion Below

The opinion of the court below is reported at 202 Va. 142, 116 S. E. 2d 55, and is appended hereto, *infra* at page 1a.

### Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia, appended hereto, *infra* at page 29a, was entered on September 2, 1960. An order was entered on October 12, 1960, denying petition for rehearing and is appended hereto, *infra* at page 29a.

Application for an extension of time to and until January 31, 1961, in which to file this petition was granted by Mr. Justice Frankfurter in an order dated January 3, 1961.

Jurisdiction of this Court to review the judgment below is invoked under Title 28, United States Code, § 1257(3).

### **Statute Involved**

#### **Chapter 33**

#### **ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA**

#### **Extra Session, 1956**

(Sections 54-74, 54-78 and 54-79 of the Code of Virginia as amended)

*An Act to amend and reenact §§ 54-74, 54-78 and 54-79 of the Code of Virginia, relating, respectively, to procedure for suspension and revocation of licenses of attorneys at law, and to running and capping.*

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That §§ 54-74, 54-78 and 54-79 of the Code of Virginia be amended and reenacted as follows:

§ 54-74. (1) Issuance of rule.—If the Supreme Court of Appeals or any court of record of this State, observes, or if complaint, verified by affidavit, be made by any person to such court of any malpractice or of any unlawful or dishonest or unworthy or corrupt or unprofessional conduct on the part of any attorney, or that any person practicing law is not duly licensed to practice in this State, such court shall, if it deems the case a proper one for such action, issue a rule against such attorney or other person to show cause why his license to practice shall not be revoked or suspended.

(2) Judges hearing case.—At the time such rule is issued the court issuing the same shall certify the fact of such issuance and the time and place of the hearing thereon, to the chief justice of the Supreme Court of Appeals, who shall designate two judges, other than the judge of the court issuing the rule, of circuit courts or courts of record of cities of the first class to hear and decide the case in conjunction with the judge issuing the rule; which such two judges shall receive as compensation ten dollars per day and necessary expenses while actually engaged in the performance of their duties, to be paid out of the treasury of the county or city in which such court is held.

(3) Duty of Commonwealth's attorney.—It shall be the duty of the attorney for the Commonwealth for the country or city in which such case is pending to appear at the hearing and prosecute the case.

(4) Action of court.—Upon the hearing, if the defendant be found guilty by the court, his license to practice law in this State shall be revoked, or suspended for such time as the court may prescribe; provided, that the court, in lieu of revocation or suspension, may, in its discretion, reprimand such attorney.

(5) Appeal.—The person or persons making the complaint or the defendant, may, as of right, appeal from the judgment of the Court to the Supreme Court of Appeals by petition based upon a true transcript of the record, which shall be made up and certified as in actions at law.

(6) "Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct", as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association



*with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this chapter, or the failure, without sufficient cause, within a reasonable time after demand, of any attorney at law, to pay over and deliver to the person entitled thereto, any money, security or other property, which has come i to his hands as such attorney; provided, however, that nothing contained in this Article shall be construed to in any way prohibit any attorney from accepting employment to defend any person, partnership, corporation, organization or association accused of violating the provisions of Article 7 of this chapter.*

(7) Representation by counsel.—In any proceedings to revoke or suspend the license of an attorney under this or the preceding section, the defendant shall be entitled to representation by counsel.

§ 54-78. As used in this article:

(1) A "runner" or "capper" is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated.

The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit

or procure business for such person, partnership, corporation, organization or association, or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.

(2) An "agent" is one who represents another in dealing with a third person or persons.

§ 54-79. It shall be unlawful for any person, corporation, partnership or association to act as a runner or caper, as defined in § 54-78 to solicit any business for an attorney at law or such person, partnership, corporation, organization or association, in and about the State prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, police courts, county courts, municipal courts, courts of record, or in any public institution or in any place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

2. An emergency exists and this act is in force from its passage.

### Statement

Petitioner is a nonprofit membership corporation, incorporated under the laws of the State of New York (F. 45, 165, 496-502).<sup>1</sup> It is licensed to do business in Virginia as a foreign corporation (F. 191).

<sup>1</sup> There are two transcripts which make up the record in this case: (1) The printed record used in connection with the appeal in N.A.A.C.P. v. Harrison, No. 127, Oct. Term, 1958, 360 U. S. 167—the citations to that record will be identified by the prefix "F"; (2) the printed record of additional testimony taken in the Circuit Court of the City of Richmond, when suit was there instituted for an authoritative state construction and interpretation of the legislation at issue in this petition—references to this record will be identified by the prefix "S".

Petitioner's activities in Virginia are carried on through some 89 chartered branches scattered throughout the state. These branches are grouped together into an unincorporated association called the Virginia State Conference of Branches which acts on matters of statewide concern (F. 46, 134-135, 136). Its basic aims and purposes are to improve the status of Negroes in American life,<sup>2</sup> and through the national organization, the Virginia State Conference of Branches, local branches and members, petitioner seeks full citizenship rights for all persons in Virginia without debilitation based upon race.

In its effort to achieve this overall objective, petitioner encourages Negroes to assert their constitutional rights and in some instances, assists those who institute litigation that seeks vindication of the guarantees against racial and color differentiations contained in the Fourteenth and Fifteenth Amendments to the Constitution of the United States (F. 170, 171). While petitioner, of course, attempts to achieve its aims in other ways as well (F. 171, 172), the issues raised in this case relate solely to its involvement in litigation in which Negroes resort to the courts in an effort to free themselves and the country of the burdens of racial discrimination.

The Virginia State Conference has a legal committee presently composed of 15 lawyers (S. 93)<sup>1</sup> residing in different parts of the state. This committee, more commonly known as the legal staff, is elected at each annual state convention, and it in turn elects a chairman (F. 48, 157; S. 102-104).

The petitioner organization becomes involved in litigation when an aggrieved person contacts either a member

---

<sup>2</sup> The Court has had occasion to examine the aims, purposes and organizational structure of the petitioner organization. See *N.A.A.C.P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516. Hence, no detailed explanatory statement in that regard is being set forth in this petition.

of the legal staff in person or the Executive Secretary of the Virginia State Conference of Branches, who then refers the complaining party to the Chairman or to some other member of the legal staff, if the situation appears to be a genuine grievance concerning state-imposed racial discrimination (F. 48, 147-150, 207, 563, 567). The Chairman either confers with the complaining party or is apprised of the facts by a member of the legal staff. If he concludes that the situation is one with which the organization should concern itself, he recommends that the State Conference assume the financial obligations involved in prosecuting the matter in the courts (F. 48, 150, 209, 210). This recommendation is communicated to the President of the State Conference and upon the latter's concurrence the Conference obligates itself to underwrite the expenses of the litigation (F. 48, 150). In most instances the lawyer handling the litigation is a member of the legal staff (F. 152, 153, 159), and there is no complaint in the record from any litigant in this regard. Once the Conference undertakes to underwrite the cost of the litigation, it does not pay any monies to the complaining party. The funds go to the attorney representing the litigant for out-of-pocket expenses incurred, plus a fixed per diem for time spent in the preparation and trial of the cause (F. 48, 209-210, 646-647). The compensation received by the lawyers is well below that which they would normally feel entitled to demand (F. 321, 325, 329).

Petitioner's policy against discrimination is well known, and the public is aware of the fact that it will underwrite the costs of prosecuting in the courts a legitimate complaint involving discrimination which it believes to be unlawful (S. 113).

Petitioner is not a legal aid society. It does not give assistance to Negroes merely because they are Negroes or because they are indigent, and membership in the organization is not essential for aid to be forthcoming. Petitioner concerns itself solely with the validity of racial discrimination

where resolution of the question involved may affect Negroes in general (S. 121). For the past several years—since 1950 at least—it has refused to finance litigation involving racial discrimination unless the court action was aimed at contesting the legality of racial segregation *per se* (S. 113, 125). It does not act until some individual comes asking for help (F. 144), and if there is a change of heart and the individual wishes to withdraw prior or subsequent to the commencement of the law suit, there is never any problem of his being able to do so (F. 232; S. 80, 131).

Chapter 33, along with Chapters 31, 32, 35 and 36, was passed as a package at the 1956 Extra Session of the General Assembly of Virginia. These statutes were part of Virginia's "massive resistance" plan to implementation of this Court's decision in *Brown v. Board of Education*, 347 U. S. 483. The chronology of events, from the appointment of the Gray Commission on Public Education, which was empowered to recommend ways and means for dealing with the *Brown* decision, to the 1956 Extra Session of the General Assembly, called to enact legislation to preserve segregated schools and at which Chapter 33 became law, is set out in the opinion of Judge Soper in *N.A.A.C.P. v. Patty*, 159 F. Supp. 503 (E. D. Va. 1959), appended hereto *infra*, pages 30a, 40a-47a, and will not need repetition here.

In the belief that Chapters 31, 32, 33, 35 and 36 were enacted to destroy the organization and that the laws denied due process, equal protection of the laws, freedom of speech and association to petitioner and all those connected with it in seeking the development and implementation of constitutional doctrine outlawing racial discrimination, petitioner brought suit in a specially-constituted statutory United States District Court for the Eastern District of Virginia attacking the constitutionality of all of these statutes and seeking to enjoin their enforcement (See *N.A.A.C.P. v. Patty*, *supra*). That court, on January 21, 1958, struck down Chapters 31, 32 and 35. It found Chapters 33 and 36, however, too ambiguous for construc-



tion by the federal court prior to an authoritative construction and interpretation by the state courts, and as to these latter statutes, petitioner was instructed to institute proceedings in the state courts.<sup>3</sup>

The instant proceedings were instituted in the Circuit Court of the City of Richmond seeking a judgment declaratory of the construction and interpretation of Chapters 33 and 36 to the effect that the activities of petitioner, its affiliates, officers, members, contributors and voluntary workers, in encouraging Negroes to assert their constitutional rights and in expending monies to defray the cost of litigation designed to eliminate state-imposed racial segregation; the practice of litigants, in accepting such aid in cases aimed at the establishment of legal and constitutional standards of equal justice without regard to race or color; and the activities of attorneys, in representing such litigants when the fees and expenses are paid by petitioner, were lawful and not in violation of Chapters 33 and 36. In addition, petitioner alleged that if Chapters 33 and 36, as construed, rendered these aforesaid activities unlawful, that Chapters 33 and 36 were unconstitutional and void, being in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and their enforcement against petitioner, and those associated with it should be permanently enjoined.

The case was tried in the Circuit Court on the record and exhibits used in connection with the appeal in

---

<sup>3</sup> Subsequently, sub nom *N.A.A.C.P. v. Harrison*, 360 U. S. 167, the judgment of the federal court in respect to Chapters 31, 32 and 35 was vacated upon the grounds that the doctrine of federal abstention required the federal court to withhold a decision on the merits in respect to these statutes until they had been given an authoritative interpretation by the state courts. Such proceedings are now pending in the Circuit Court of the City of Richmond. The outcome of those proceedings will undoubtedly be affected by this determination.



*N.A.A.C.P. v. Harrison*, 360 U. S. 167, the bill of complaint filed by petitioner, respondent's answer and additional testimony and exhibits adduced at the trial in the Circuit Court of the City of Richmond.

That court construed Chapters 33 and 36 as proscribing petitioner's giving assistance to persons in litigation involving racial discrimination and found no inconsistency between the statutes as thus construed and the constitutional guarantees of equal protection and due process.

On appeal to the Supreme Court of Appeals of Virginia, Chapter 36 was held to be fatally defective, in that it was violative of the Fourteenth Amendment to the Constitution of the United States. Chapter 33, however, was found to be a proper regulation of the legal profession and a valid prohibition of the activities of the petitioner which were held to constitute the unlawful solicitation of legal business. The Supreme Court of Appeals concluded that Chapter 33 prohibited petitioner's giving assistance to litigants to vindicate their constitutional rights to freedom from racial discrimination, by referring complaints brought by such persons to attorneys associated with petitioner and by paying to the attorneys whatever fees and expenses such litigation involved.

Application for rehearing was denied and petitioner brings the cause here.

### Question Presented

Whether a state, under the guise of regulating the practice of law, may make criminal the activities of petitioner and its affiliates, in defraying the costs and expenses of litigation instituted by Negroes who seek to vindicate their constitutional right to be free of racial discrimination, where these activities are not undertaken to promote any private or commercial interests, and may subject attorneys acting as counsel in such litigation to disbarment or other

disciplinary proceedings, without violating the Fourteenth Amendment mandates of due process and equal protection of the laws and without abridging the Constitution's guarantee of free access to the courts.

### **Reasons for Allowance of the Writ**

1. This Court's consistent practice of making its own independent evaluation of the evidentiary facts upon which a lower court's adjudication of constitutional claims is based compels the granting of this petition. See, *Blackburn v. Alabama*, 361 U. S. 199; *Spano v. New York*, 360 U. S. 345; *Napue v. Illinois*, 360 U. S. 264; *Muir v. Louisville Park Theatrical Association*, 102 F. Supp. 525 (W. D. Ky. 1951), aff'd, 202 F. 2d 275 (6th Cir. 1953), vacated and remanded, 344 U. S. 971; *Niemotko v. Maryland*, 340 U. S. 268, 271; *Feiner v. New York*, 340 U. S. 315, 316, 322, fn. 4; *Watts v. Indiana*, 338 U. S. 49, 50-51; *Hooven & Allison Co. v. Evatt*, 324 U. S. 652, 659; *Pierre v. Louisiana*, 306 U. S. 354, 358; *Baltimore & Ohio Railroad Company v. United States*, 298 U. S. 349, 372; *St. Joseph Stock Yards Company v. United States*, 298 U. S. 38, 49-55; *Norris v. Alabama*, 294 U. S. 587, 389, 590; *Ohio Valley Water Company v. Ben Aron Borough*, 253 U. S. 287. Cf. *Ng Fung Ho v. White*, 259 U. S. 276, 284, 285. And see Jaffe, "Judicial Review: Constitutional and Jurisdiction Fact," 70 *Harr. L. Rev.* 953 (1957). Indeed, this case is strikingly illustrative of the wisdom of the Court's refusal to foreclose reappraisal of a finding that is essential to determination of a constitutional question.

Here, the state and federal courts, on virtually the same evidence, reached irreconcilable conclusions as to what facts the record discloses. The Supreme Court of Appeals reads the evidence as showing that petitioner is "engaged in fomenting and soliciting legal business" in which it is not a party and has "no pecuniary right or liability," and which it channels "to the enrichment of certain lawyers employed" by it, "at no cost to the litigants and over

which the litigants have no control" (See Appendix A, *infra* at p. 15a). It found no merit in petitioner's argument that its activities are not "what are commonly considered as solicitation of business contrary to the canons of legal ethics" (*id.* at p. 16a). It concluded that the petitioner and its affiliates act as intermediaries between the client and the lawyer in the solicitation of legal business and, therefore, that acceptance of employment by attorneys of cases handled under petitioner's auspices violate Canons 35 and 47 of the Canons of Professional Ethics in force in Virginia since October 21, 1938, 178 Va. p. XXXII (*id.* at 17a). The court stated that Chapter 33 was designed to and could appropriately curb the kind of activities in which petitioner is engaged and, held that in regulating and restricting petitioner's actions, the statute does not violate constitutional guarantees of freedom of speech or association, due process or equal protection of the laws.

The federal court, on the other hand, found that the activities of petitioner did not "amount to a solicitation of business or a stirring up of litigation of the sort condemned by the ethical standards of the legal profession" (See Appendix B, *infra* at p. 81a). Moreover, it found petitioner's activities authorized by Canon 35 of the Canons of Professional Ethics of the American Bar Association (*id.* at p. 79a). While finding Chapter 33 obscure and difficult to understand, the court concluded "the general purpose seems to be to hit any organization which participates in a law suit in which it has no financial interest and also to fasten the charge of mal-practice upon any lawyer who accepts employment from such an organization. If the statute should be so interpreted as to forbid a continuance of the activities of [petitioner] in respect to litigation as described in this opinion, it would in large measure destroy [its] effectiveness." (*id.* at p. 83a).

That the state and federal courts reached disparate determinations as to petitioner's constitutional claims was

the inevitable consequence of the division between them as to what the evidentiary facts disclosed. Pursuant to the principle enunciated in the cases hereinabove cited, it is respectfully submitted that this petition should be granted. Then, this Court, after an independent evaluation of all the evidentiary facts contained in this record, may determine for itself whether there is merit to petitioner's contention that Chapter 33, as applied to its activities, infringes rights of freedom of speech and of association, denies due process and equal protection of the laws and constitutes an effective barrier to free access to the courts raised against those seeking relief from racial discrimination imposed by state officials.

2. In characterizing petitioner's activities as the solicitation of legal business under the terms of Chapter 33, the court below gave a construction and interpretation to the statute which renders it arbitrary and unreasonable within the meaning of applicable decisions of this Court. See *Koningsburg v. State Bar of California*, 353 U. S. 252; *Schwartz v. State Bar Examiners*, 353 U. S. 232; *Moran v. Doud*, 354 U. S. 457; *Williamson v. Lee Optical of Oklahoma*, 348 U. S. 483. Maintenance of the integrity of the legal profession is, of course, a matter of appropriate concern for the state legislature. In dealing with Chapter 33, however, as it relates to petitioner's activities, it should be recognized, petitioner submits, that far more than that abstract question is present.

The petitioner organization, since its inception, has been engaged in an effort to secure equal civil rights for Negroes within the democratic process. Prevailing political, social and economic forces have offered little prospect of legislative or executive action to correct the inequities of second-class citizenship. But complaint in respect to the validity of caste and color differentiations lends itself to adjudication in the courts, since what is involved is a determination of the meaning and scope of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Petitioner has sought the establishment in the fundamental law of such yardsticks as would outlaw the evil of racial discrimination. Pursuant to this end petitioner supports test cases aimed chiefly at determining the reach and scope of due process, equal protection and constitutional guarantees against disenfranchisement. Some of these cases reached this Court, *e.g.*, *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Smith v. Allwright*, 321 U. S. 649; *Sweatt v. Painter*, 339 U. S. 629; *Brown v. Board of Education*, 347 U. S. 483. That petitioner has made possible the preparation and research necessary for presentation of the constitutional issues involved in the above and other litigation concerning the validity of some aspect of racial discrimination; that it has paid the legal fees and expenses; and that attorneys associated with it were counsel in such cases has been no secret. See Note, 58 Yale L. J. 574 (1949). The high cost of litigation makes sponsorship of this kind of litigation by the individual Negro an impossibility.<sup>4</sup> Petitioner does not concern itself with business or private interests of individuals. It involves itself in litigation relating solely to civil rights, and then only where the question being litigated is likely to have an impact upon the Negro community as a whole. Of course, in a larger sense the issues determined in litigation sponsored by petitioner affect the whole American public. The lawyers involved, while receiving some financial remuneration, do not obtain anything close to what would be considered an adequate fee for legal services.<sup>5</sup> Petitioner's activities and those of the lawyers come within that category which the courts and bar associations have given unqualified approval. See *e.g.*, *In re Ades*, 6 F. Supp. 467 (D. C. Md. 1934); *Gunnels v. Atlantic Bar Assn.*, 191 Ga. 366, 12 S. E. 2d 602 (Ga. 1940); Opinion No. 148, A. B. A. Opinions of the Committee on Professional Ethics and Grievances 308 (1935); Opinion 282, *id.*, at page 591 (1950); Note, 3 R. R. L. R. 1257.

<sup>4</sup> See letter of Gordon M. Tiffany, Staff Director of the United States Commission on Civil Rights to Senator Jacob K. Javits, 106 Cong. Rec. (No. 35) 3376-3377 (Feb. 27, 1960).

<sup>5</sup> See Tiffany, *op. cit. supra*, note 4.

Certainly the kinds and types of litigation with which petitioner is connected make it highly improbable that its activities are of that class that gives the bench and bar concern about the maintenance of the integrity of the legal profession. Indeed, little interest was manifested in petitioner's support of litigation until some states began to seek a means to avoid adhering to *Brown*. See Note, 3 R. R. L. Rep. 1257 (1958). Since implementation of any doctrine of constitutional law, unless voluntarily adhered to by state officials, requires the institution and prosecution of court litigation, it soon became evident that the state policy of segregation might be preserved for a while, at least, if petitioner was prevented from supporting litigation to invalidate segregation.

Viewed realistically, therefore, there is no escape from the conclusion that Virginia sought by this statute to undergird its plan of "massive resistance" to the implementation of the *Brown* decision. With decisions in *Cooper v. Aaron*, 358 U. S. 1; *Harrison v. Day*, 106 S. E. (2d) 636; *James v. Almond*, 170 F. Supp. 331 (E. D. Va. 1959), appeal dismissed, 359 U. S. 1006, "massive resistance" proved to be a bankrupt policy, and it was abandoned. Resistance to full implementation of constitutional proscriptions against racial segregation, however, is still a potent force in the state today.

Whatever the intent and purpose of Chapter 33, as now construed and applied its effect is to immobilize petitioner organization and greatly handicap the effort to secure implementation of the *Brown* decision in Virginia. On the other hand, all the state's resources are being used to maintain the prevailing pattern of segregation, thereby preventing many residents and citizens of Virginia from enjoyment of their declared constitutional rights.

In the light of these circumstances, the construction and application of Chapter 33 enunciated below is not reasonably



related to a valid governmental objection, and the statute, therefore, is fatally defective. Cf. *Shelton v. Tucker*, — U. S. —, 29 L. W. 4058, decided December 12, 1960.

3. As construed, Chapter 33 cannot be squared with the decisions of this Court in *N.A.A.C.P. v. Alabama*, 357 U. S. 449, and *Bates v. Little Rock*, 361 U. S. 516. The court below states that petitioner and its associates "may not be prohibited from acquainting persons with what they believe to be their rights and advising them to assert their rights, in so doing it is prohibited from soliciting legal business for their attorneys or any particular attorneys." Moreover, the court below held that petitioner's activities constituted solicitation. Thus, the asserted protection of freedom of speech and association guarantees becomes empty cant. The court holds that petitioner and its members cannot engage in the activities revealed in this record. No attorney on the petitioner's State Conference legal staff can safely act as counsel in any litigation in which petitioner has acquainted persons with their rights, advised them to assert same or contributed money for prosecution of the law suit, without being prospectively guilty of violating this statute. No other attorneys can act in such cases since they are subject to being the "particular attorneys" for whom petitioner has engaged in solicitation of legal business. The short of it is that petitioner must forego any activity relating to litigation to avoid the pinch of Chapter 33. Since this has been the area of petitioner's greatest effectiveness, Chapter 33, therefore, as now construed means a serious weakening, if not destruction, of petitioner organization in Virginia. As such, it is submitted, the rights of petitioner's members to freedom of association and to take lawful action to secure the lawful objective of equal citizenship privileges for all persons without regard to their race have been seriously impaired. See *N.A.A.C.P. v. Alabama*, *supra*; *Bates v. Little Rock*, *supra*; Cf. *Talley v. California*, 362 U. S. 60.

4. The decision below seriously restricts group sponsorship of test litigation, designed for ultimate determination by this Court, in which serious and legitimate claims are made concerning the constitutional validity of a federal or state statute, action or regulation which poses a threat to some group interest. As such the questions raised should be settled by this Court since this is a case of first impression having far reaching consequences of national import and affecting a myriad variety of federal rights. Cf. *Roley v. Ohio*, 360 U. S. 423.

Group sponsorship of litigation has been an accepted practice in the United States, for many years. Labor unions,<sup>6</sup> trade associations,<sup>7</sup> consumers organizations,<sup>8</sup> nationality groups,<sup>9</sup> bar associations,<sup>10</sup> *ad hoc* committees,<sup>11</sup>

<sup>6</sup> See reprint of testimony of Walter Drew before Senate Judiciary Committee (1914) in, "The Crime of the Century and Its Relation to Politics," p. 24 (Nat'l. Assn. of Manufacturers publication): News You Don't Get, August 11, 1936, April 27 and May 5, 1938 (published by National Committee for the Defense of Political Prisoners) pages unnumbered; Church, S. H., "Trade Unionism and Crime." *New York Times*, Oct. 1, 1922.

<sup>7</sup> E.g., The National Erector's Association retained Walter Drew to represent it in litigation. See reprint referred to in note 6 *supra*. Counsel cannot document the fact that trade associations have given support to litigation which seeks to determine the validity of laws affecting business interests since such information is not contained in the case reports. However, it would be a fair assumption that such support does take place, especially since Bar Association holdings have condoned litigation of this character. See Opinion 148, Committee on Professional Ethics and Grievances, A.B.A. (1935).

<sup>8</sup> The Consumers League sponsored litigation involving the constitutionality of social welfare legislation in the 1930's. Schlesinger A. M., *Crisis of the Old Order* (1957) pp. 113 and 419.

<sup>9</sup> Between 1856 and 1875 the German Society provided a special legal committee to protect newly arrived immigrants. Smith, R. H., *Justice and the Poor* (1921) p. 134. American Committee for the Defense of Puerto Rican Political Prisoners. News You Don't Get, *op. cit.* *supra*, note 6.

<sup>10</sup> *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. (2d) 602 (1940).

<sup>11</sup> E.g., See Schlesinger, A. M., *op. cit.* *supra*, note 8 at page 113; Scottsboro Defense Committee, Binche, R.; "Programs, Ideologies and Tacits and Achievements of Negro Betterment and Inter-Racial Organizations," manuscript prepared for the Carnegie Foundation Study by Gunnar Myrdal of the Negro in America (1940).

racial groups,<sup>12</sup> religious groups,<sup>13</sup> labor defense committees,<sup>14</sup> child welfare organizations,<sup>15</sup> civil liberties groups,<sup>16</sup> property owners,<sup>17</sup> tenants,<sup>18</sup> professional group,<sup>19</sup> and committees for protection of immigrants<sup>20</sup> have sponsored litigation involving some legal question affecting the interests of the group concerned. In the field of constitutional law where adjudication of a case or controversy is a prerequisite to judicial determination of whether governmental action is constitutionally permissible, the test case is a recognized method of raising constitutional claims. See *Stark v. Wickard*, 321 U. S. 288, 310; *Evers v. Dwyer*, 358 U. S. 202.

The right of individual or groups to sponsor litigation where there is no agreement to share the proceeds and where the members of the group have a common or general or patriotic interest in the principle of law to be estab-

<sup>12</sup> See New York Times article, *Champion of Indians*, March 3, 1958; Note, 58 Yale L. J., *supra*.

<sup>13</sup> E.g., Jehovah's Witnesses apparently sponsored a number of cases in the United States Supreme Court, e.g., *Marsh v. Alabama*, 326 U. S. 501, and *Cantwell v. Connecticut*, 310 U. S. 296. The Methodist Federation for Social Service provided financial assistance in the *Scottsboro Case*. *News You Don't Get*, Jan. 3, 1936, pages unnumbered.

<sup>14</sup> E.g., *See In Re Ades*, 6 F. Supp. 467 (D. Md. 1934).

<sup>15</sup> E.g., *The Children's Aid Society of Boston, Smith, R. H., Justice and the Poor*, op. cit. *supra*, note 7 at page 223 (1921), p. 223.

<sup>16</sup> E.g., *The American Civil Liberties Union*.

<sup>17</sup> *Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyer's Association*, Columbia Univ. Press, 1956, Op. No. 113; *Hurd v. Hodge*, 334 U. S. 24.

<sup>18</sup> *Shanks Village Committee Against Rent Increases v. Cary*, 103 F. Supp. 566 (S. D. N. Y. 1952).

<sup>19</sup> E.g., *Shelton v. Tucker*, — U. S. —, 29 L. W. 4058, decided Dec. 12, 1960.

<sup>20</sup> E.g., *American Committee for the Protection of the Foreign Born assisted Otto Richter, a German refugee seeking political asylum*, *News You Don't Get*, Feb. 25, 1935, pages unnumbered.

lished has been sanctioned by court decisions. See *Brannon v. Stark*, 185 F. 2d 871 (D.C. Cir. 1950), aff'd 342 U. S. 451; *Gunnels v. Atlanta Bar Assn.*, 191 Ga. 366, 12 S. E. 2d 602 (1940); *Brush v. Carbondale*, 299 Ill. 144, 82 N. E. 252 (1907); *Davies v. Stowell*, 78 Wis. 334, 47 N. W. 370; *Royal Oak Drain. Dist. v. Keefe*, 87 F. 2d 786 (6th Cir. 1937); *Vita-phone Corp. v. Hutchison Amusement Co.*, 28 F. Supp. 526 (D. Mass. 1939); *In re Ales*, 6 F. Supp. 467 (D. Md. 1934).

This decision below, therefore, not only affects petitioner's interests and those associated with it, but is adverse to the sponsorship of litigation by any group. This raises serious questions relating to the individual's right and opportunity to subject governmental action to measurements against the requirements of the Constitution of the United States. It seriously hampers the individual in exercise of his right of access to the courts, see *Terral v. Burke Construction Co.*, 257 U. S. 529; *Truax v. Corrigan*, 257 U. S. 312, 334; *Barbier v. Connelly*, 113 U. S. 27, 31, and raises grave questions in respect to state authority to delimit the prosecution of federal rights in the federal courts. Cf. *Theard v. United States*, 354 U. S. 278; *In re Crow*, 359 U. S. 1007.

Barratry, maintenance and champerty were the great evils of a bygone era. See Radin, "Maintenance by Champerty," 24 *Calif. L. Rev.* 48 (1935); Note, 3 *R. R. L. Rep.* 1257 (1958). Today the court and the bar seek to guard against commercialization of the law and the reduction of the profession from a high and noble priesthood to a competitive business enterprise with a resultant lowering of ethical standards. The high cost of legal services, and its unavailability to lower and middle-income groups, see "Judicial Administration and the Common Man," 287 *Annals* pp. 34-41, 43-52, 110-119, 120-126 (1953), and the time-consuming factor in litigation, see "Lagging Justice," 328 *Annals*, passim (1960), have been the chief concerns in modern day administration of justice.

At best, the state's power to deal with the evils of barratry must compete with the public interest in keeping the

pathway to the courts unimpeded. In attempting to accommodate these two competing claims, suppression of fundamental personal freedom must be avoided.

Whether, therefore, an organization, such as that now before the Court, in seeking the adjudication and settlement of constitutional questions which affect the lives, hopes and aspirations of a sizeable segment of the nation's population, is engaged in unlawful activities in furnishing the means for prosecution of litigation testing the validity of racial discrimination, is a question of paramount importance which should be determined by this Court.

### CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition should be granted.

Respectfully submitted,

ROBERT L. CARTER,  
20 West 40th Street,  
New York 18, New York,

OLIVER W. HILL,  
214 East Clay Street,  
Richmond 19, Virginia,  
*Attorneys for Petitioner.*

HERBERT O. REID,  
*of Counsel.*

## APPENDIX A

(Opinion of the Supreme Court of Appeals of Virginia)

Present: All the Justices

---

Record No. 5096

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ETC.

—v.—

A. S. HARRISON, JR., Attorney General of Virginia, et al.

---

Record No. 5097

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

—v.—

A. S. HARRISON, JR., Attorney General of Virginia, et al.

---

OPINION BY JUSTICE LAWRENCE W. L'ANSON

Staunton, Virginia, September 2, 1960

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND

*[Signature]*  
EDMUND W. HENING, JR., Judge:

The National Association for the Advancement of Colored People, hereinafter referred to as the NAACP, and the NAACP Legal Defense and Educational Fund, Inc., hereinafter referred to as the Fund, appellants herein, filed their separate bills of complaint in the court below against Albertis S. Harrison, Jr., Attorney General of the Commonwealth of Virginia, the attorneys for the Commonwealth of



the cities of Richmond, Newport News and Norfolk, and the counties of Arlington and Prince Edward, Virginia, appellees herein, to secure a declaratory judgment construing chapters 33 and 36, Acts of Assembly, Ex. Sess., 1956, codified as §§ 54-74, 54-78, 54-79, Code of 1950, as amended, 1958 Replacement Volume, and §§ 18-349.31 to 18-349.37,<sup>1</sup> inclusive, Code of 1950, as amended, 1958 Cum. Supp., as they may affect the appellants, their officers, members, affiliates of NAACP, contributors, voluntary workers; attorneys retained or employed by them or to whom they may contribute monies and expenses, and litigants receiving assistance in cases involving racial discrimination, because of the activities of the NAACP and the Fund in the past or the continuation of like activities in the future.

The NAACP, in addition to seeking a construction of the aforementioned statutes, alleged that the statutes are unconstitutional and void because their enforcement would deny to it, its affiliates, officers, members, contributors, voluntary workers, attorneys retained or employed by it, and litigants whom it may aid, due process of law and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The two suits were heard and considered together in the court below, by consent of all parties, on the appellants' bills; their exhibits, which included a transcript of the evidence, exhibits, the majority and dissenting opinions of the three-judge federal court, and the judgment entered in the case of *National Association for the Advancement of Colored People v. Patty*, 159 F. Supp. 503 (judgment vacated and remanded *sub nom. Harrison, et al. v. National Association for the Advancement of Colored People*, 360 U. S. 167, 79 S. Ct. 1025, 3 L. ed. 2d 1152); the answers and exhibits of the appellees; and *ore tenus* testimony on behalf of the appellees and the NAACP, except one deposition taken on behalf of the NAACP. No testimony was taken on behalf of the Fund.

<sup>1</sup> Now §§ 18.1-394 to 18.1-400, 1960 Cum. Supp.

The court below held, so far as need here be stated, (1) that chapters 33 and 36 do not violate the constitutional guarantees of freedom of speech and assembly, due process of law and equal protection of the laws under the Fourteenth Amendment; (2) that the evidence shows that the appellants, their officers, affiliates, members, voluntary workers and attorneys are engaged in the improper solicitation of legal business and employment in violation of chapter 33 and the canons of legal ethics; (3) that attorneys who accept employment by appellants to represent litigants in cases solicited by the appellants, and in which they pay all costs and attorneys' fees, are violating chapter 33 and the canons of legal ethics; and (4) that the appellants and those associated with them advise persons of their legal rights in matters in which the appellants have no direct interest, and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, and as an inducement for such persons to assert their legal rights through the commencement of or further prosecution of legal proceedings against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an employee for either or both or any of the foregoing, the appellants furnish attorneys employed by them and pay all court costs incident thereto, and that these activities violate either chapter 33 or 36, or both.

The court's decree enumerated certain detailed activities of the appellants which do not violate chapters 33 and 36, and since they are not challenged by any of the parties hereto, they need not be stated herein.

From the decree of the chancellor we granted an appeal and *supersedeas* in each cause. They will be considered together by us, as they were in the court below, except the statutes involved will be considered separately.

The questions presented on these appeals are:

(1) Do the activities of the appellants, or either of them, amount to solicitation of business, prohibited by chapter 33?

(2) Do the activities of the appellants, or either of them, amount to an inducement to others to commence or further prosecute lawsuits against the Commonwealth, its officers, agencies, or political subdivisions, as prohibited by chapter 36?

(3) Do the provisions of either chapters 33 or 36 violate the Virginia Bill of Rights (Constitution § 12) and the Fourteenth Amendment to the Constitution of the United States?

The evidence shows that the NAACP and the Fund are non-profit membership corporations organized under the laws of the State of New York with authority to operate in this Commonwealth as foreign corporations. The NAACP and the Fund functioned as one corporation with the same officers, directors and members from 1911 until 1948, when, for tax purposes and other reasons, the Fund was organized as a separate corporation.

The principal purpose of the NAACP is to eliminate all forms of racial segregation. It has been described by its counsel as a political organization for those who oppose racial discrimination.

Affiliated with the NAACP are approximately one thousand unincorporated branches operating in forty-five states and the District of Columbia. The branches are chartered by the NAACP, and, for failure of the branch officers to follow strictly the policies and directives of the national body, their charters may be revoked or their officers removed. The branches are generally grouped together in each state into an unincorporated association. In Virginia the association is known as the Virginia State Conference of NAACP Branches.

The State Conference holds annual conventions which are attended by delegates from the local branches. It takes the lead in NAACP's activities in this State under the administration of a full-time salaried executive secretary who is responsible to a board of directors. The executive secretary coordinates the activities of the branches in accordance with the policies and objectives of the Conference and

the NAACP, supervises local membership and fund raising campaigns, distributes educational material dealing with racial matters, and performs many other duties.

The executive secretary, members of the legal staff, and other representatives of the State Conference make speeches before local branches and other groups for the purpose of advising those present that all segregation laws are unconstitutional and void, and urging them to challenge laws to eliminate segregation through the institution of legal proceedings which the State Conference, the NAACP and the Fund sponsor at no cost to the litigants.

The aid given litigants to initiate suits is in the form of furnishing lawyers who are members of the legal committee of the Conference, the NAACP, and regional counsel of the Fund, the payment of court costs and other expenses of litigation.

The Conference receives financial support to defray the cost of litigation it sponsors and other expenses from the local branches, the national bodies, and contributions.

Letters and directives addressed to officers of local branches and signed by the executive secretary of the Conference, filed as exhibits by the appellees, show the plans, methods and procedures used by the NAACP to sponsor litigation in school cases.

A letter dated May 26, 1954, reads in part as follows:

"It is of utmost importance that your branch retain the leadership in all actions engaged in in your community."

In a letter dated June 16, 1954, it is said:

"The Conference is proceeding with the development of its plan and will advise you thereof as soon as this work is completed."

A confidential directive of June 30, 1955, from the president and executive secretary to local branches relative to the handling of petitions for presentation to local school boards stated in part as follows:

"Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of parents or guardians only."

"The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way. \* \* \*

"The Education Committee chairman will forward completed petitions to the Executive Secretary of the State Conference. \* \* \*

"Following the above procedure, it becomes apparent that the faster your branches act the sooner will your school board be petitioned to desegregate your schools. Every act of our branch and the State Conference officials from this point on should be considered as an emergency action, and must take precedence over routine affairs—personal or otherwise."

Another directive contained in part these instructions:

"Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.

"If no plans are announced or steps taken towards desegregation by the time school begins this fall, 1955, the time for law suits has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.

"At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court."

An official report of NAACP and its Virginia Conference activities from May 17, 1954, to September 13, 1957, shows the purpose and a continuation of their method of operation as follows:

"UP TO DATE PICTURE OF ACTION BY NAACP BRANCHES SINCE MAY 31."

"A. Petitions filed and replies.

"A total of 55 branches have circulated petitions.

"B. Where suits are contemplated.

"Petitions have been filed in seven (7) counties/cities. Graduated negative response received in all cases.

"C. Readiness of lawyers for legal action in certain areas.

"Selection of suit sites reserved for legal staff.

"State legal staff ready for action in selected areas.

"D. Do branches want legal action?

"The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the National and State Conference officers. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education."

An explanation of the above report was made by the executive secretary of the Conference as follows: The language, "Where suits are contemplated," referred to places where petitions had been denied by local school boards; "Readiness of lawyers for legal action in certain areas," meant financial aid was available; and "Selection of suits reserved for legal staff," meant that members of the legal staff would pick the places where suits would be brought.

The State Conference maintains a legal staff of fifteen members, one of whom serves as chairman without compensation for that particular service. The members of the staff are elected at the annual convention of the Conference after being nominated by a committee, which in turn receives its recommendations for candidates from the chairman of the legal staff, and there have never been additional nominations from the floor of the convention.

The members of the legal staff of the Conference are reimbursed for expenses incurred in speaking before local branches and other groups and are paid fees at the rate of \$60.00 per day for their services in cases in which NAACP has interested itself, "as long as such attorneys adhere strictly to NAACP policies," namely, that a school case must be tried as a direct attack on segregation. Every item of expense and all legal fees paid by the Conference



are approved by the chairman of the legal staff, except the expenses and fees of its chairman, which are approved by the president of the Conference. One member of the legal staff testified that he entered two of the school segregation cases at the suggestion of the chairman, and that the relationship "has been so pleasant and so profitable." Only members of the legal staff are selected by NAACP to bring suits in which it has an interest, and the places for bringing such suits are selected by the chairman, who refers the case to a member of the legal staff residing in the area from which the complaining party came. Without exception, when a member of the legal staff brings a lawsuit in his community other members of the staff are associated with him.

The chairman of the legal staff of the Conference is a member of the legal committee of the NAACP, Virginia counsel for the NAACP, and its registered Virginia agent.

The NAACP is not a legal aid society. Its policy during the past several years has been not to participate in cases simply because Negroes need assistance on account of poverty. Assistance is given only in cases involving constitutional rights, and then only so long as litigants adhere to the principles and policies of the NAACP and the Conference.

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP when he requested the chairman of the legal staff to speak at a meeting of parents of certain school children. At this meeting some of the parents signed authorization forms for the chairman to represent such parents and their children in legal proceedings to desegregate the schools of that city. Other authorization forms were distributed and signed with no attorney's name appearing thereon, but the name of the chairman of the legal staff was inserted later.

In the Arlington school case, the petition presented to the local school board for desegregation of the schools was prepared by the State Conference, and most of the

signatures were obtained by the vice-president of the Arlington branch, who was also one of the plaintiffs in a suit later instituted. She was told by the chairman of the legal committee of the Conference and the regional counsel of the Fund that they would institute legal proceedings if the school board denied the request to desegregate the schools.

All authorization forms used in the school segregation cases were prepared by the chairman of the legal staff and most of them authorized the attorney named therein to associate such other attorneys as he desired. Usually, the general counsel of the NAACP and the regional counsel of the Fund are associated in the trial of cases sponsored by the Conference, even though such association is not directly authorized by the litigants.

Ordinarily a complaint is filed with the executive secretary, who refers it to the chairman of the legal staff, and the chairman with the concurrence of the president of the Conference, decides whether suit will be instituted. The executive secretary, however, testified that he did not refer any of the plaintiffs in the school segregation cases to the chairman of the legal staff.

Many of the litigants in school cases had no personal contact with any of the lawyers handling cases in which their names appeared as parties plaintiff, and learned of the institution of suits from newspaper accounts. Some of the litigants stated that they did not know the names of the lawyers representing them, but they did know they were NAACP lawyers.

Only one witness, out of some twenty-four litigants in school cases, testified that he would have instituted legal proceedings if the NAACP had not agreed to finance them.

The Fund has a small membership and no affiliates. Its financial support comes from contributions solicited by letters and telegrams from New York City. The purpose of the Fund, as stated in its certificate of incorporation, is as follows:

"(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustice by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

"(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

"(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds, and the status of the Negro in American life."

The director-counsel of the Fund is charged with the duty of carrying out the purposes set out in the charter and the policies fixed by its board of directors. He has under his direction a legal research staff of six full-time lawyers who reside in New York City but who may be assigned to places out of New York. In addition to the full-time legal staff, the Fund has five regional counsel, including one residing in Richmond, Virginia, at an annual retainer of \$6,000. The Fund also has at its disposal social scientists, teachers of government, anthropologists and sociologists who are used principally in cases involving school litigation.

The regional counsel of the Fund residing in Richmond, Virginia, is also a member of the legal staff of the Conference and the legal committee of the NAACP.

The Fund has been approved by the State of New York to operate as a legal aid society because of the provisions of the barratry statute of New York, but counsel stated it does not operate as such. A representative of the Fund testified in the case of the *National Association for the Advancement of Colored People v. Patty, supra*, that it furnishes legal assistance when a Conference lawyer requests it or when it is revealed from an investigation, made by the New York office through its regional counsel or one of the lawyers on the State Conference staff, that

discrimination exists because of race or color. All costs and expenses incurred in such suits brought on behalf of Negroes are borne by the Fund. The assistance given may be in the form of providing lawyers to assist Conference staff lawyers in the trial of a case, or in the preparation of briefs.

Most of the litigants in the school segregation cases brought in this State were financially able, according to the standards set by the Fund, to finance their own proceedings.

[1] The appellants contend that chapters 33 and 36 are: (1) penal statutes and should be strictly construed; (2) that the statutes are vague and ambiguous; (3) that the language of the statutes cannot be construed to apply to their activities; and in addition the NAACP says (4) if the statutes are construed to apply to their activities they are unconstitutional and void because they deny to it, its officers, employees, members, contributors, affiliates and attorneys the rights of freedom of speech and assembly, equal protection of the laws and due process of law under the Fourteenth Amendment to the Constitution of the United States:

Chapter 33 amends and re-enacts §§ 54-74, 54-78 and 54-79, Code of 1950. The pertinent parts of the chapter, with the amended parts in italics, are set out in the margin below.<sup>2</sup> These sections deal with *solicitation* of any legal

---

<sup>2</sup> Be it enacted by the General Assembly of Virginia:

1. That at 54-74, 54-78 and 54-79 of the Code of Virginia be amended and re-enacted as follows:

§ 54-74.

\* \* \*

(6) "Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct", as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this chapter.

or professional business or employment, either directly or indirectly, and provide for the disbarment of attorneys.

[Continued from page 11a]

or the failure, without sufficient cause, within a reasonable time after demand, of any attorney at law, to pay over and deliver to the person entitled thereto, any money, security or other property, which has come into his hands as such attorney; *provided, however, that nothing contained in this Article shall be construed to in any way prohibit any attorney from accepting employment to defend any person, partnership, corporation, organization or association accused of violating the provisions of Article 7 of this chapter.*

\* \* \*

§ 54-78. As used in this article:

(1) A "runner" or "capper" is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State *or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law \* or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated.*

*The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit or procure business for such person, partnership, corporation, organization or association, or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.*

(2) An "agent" is one who represents another in dealing with a third person or persons.

§ 54-79. It shall be unlawful for any person, corporation, partnership or association to act as a runner or capper \* *as defined in § 54-78 to solicit any business for \* an attorney at law or such person, partnership, corporation, organization or association, in and about the State prisons, county jails, city jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, police courts, \* county courts, municipal courts, \* courts of record, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character, whatsoever.*



guilty of "malpractice, or [of] any unlawful or dishonest or unworthy or corrupt or unprofessional conduct."

The 1950 amendment to § 54-74, subsection (6), broadens the definition of "malpractice" to include the acceptance of employment from any person, partnership, corporation, organization or association with knowledge that such person, etc., has violated any provision of article 7, chapter 4, title 54, Code of 1950, (§§ 54-78 to 54-83, inclusive).

The amendment to § 54-78 broadens the definition of "runner" or "capper" to include any person, association or corporation acting as an agent for another person, association or corporation who or which employs an attorney in connection with any judicial proceeding in which such person, association or corporation is not a party and has no pecuniary right or liability therein.

The amendment to § 54-79 broadens the offense specified which theretofore made it unlawful for any person, corporation, partnership or association to act as a runner or capper for an attorney at law or to solicit any business for him, to make it unlawful for a person, association or corporation to solicit any business for an attorney at law or any other person, corporation or association.

Violations of § 54-79 are made misdemeanors, and the license of any attorney violating any of the provisions of chapter 33 is subject to revocation or suspension.

While it is true that penal statutes are to be strictly construed, yet in construing such statutes the intention of the legislature must govern, and such intent may be found by giving to the words used their ordinary and usual meaning. *Tiller v. Commonwealth*, 193 Va. 418, 420, 69 S. E. 2d 441, 443; *Northrop & Wickham v. Richmond*, 105 Va. 335, 339, 53 S. E. 962, 963; *Gates & Son Co. v. Richmond*, 103 Va. 702, 706, 707, 49 S. E. 965, 966.

We find no vagueness or ambiguity in the language of chapter 33. The words used are clear and definite in their meaning.

It is clear from the language of the act that the intent and purpose of the legislature in amending and re-enact-



ing chapter 33 was to strengthen the existing statutes to further control the evils of solicitation of legal business for the benefit of attorneys by a person who is not a party to a proceeding and in which he has no pecuniary right or liability. Solicitation of legal business has been considered and declared from the very beginning of the legal profession to be unethical and unprofessional conduct.

[2] There is no merit in the contention of the appellants that the statutes cannot be construed to apply to their activities. When we apply the plain language and meaning of the statutes to the evidence, it is perfectly manifest that the NAACP, its Virginia Conference, its branches and the Fund are engaged in the unlawful solicitation of legal business for their attorneys, in which resulting litigation they are not parties and have no pecuniary right or liability, in violation of chapter 33.

The declared purpose of the NAACP and the Fund is to eradicate every form of racial discrimination. To accomplish this objective the NAACP has organized Negroes throughout the Commonwealth into branches, and formed a legal staff for the purpose of directing and controlling all actions pertaining to racial matters. Members of the NAACP, representatives of the Conference and its legal staff appear before the membership of local branches and other groups in communities in which the organizations wish suits to be brought and by persuasive methods urge those present to assert their constitutional rights to eliminate racial discrimination by becoming parties plaintiff to legal proceedings, when many of the prospective litigants have had no previous thought of doing so. The services of attorneys selected by the NAACP, its Conference and the Fund are offered at no cost to the prospective litigants as an inducement to institute suits. The litigants and attorneys, however, must adhere to a policy of permitting the NAACP, the Conference and the Fund to direct and control the litigation.

The absence of the usual contact between many of the litigants and the attorneys instituting proceedings is indicative of the control of the litigation by the NAACP and the Conference.

Since the appellants do not operate as legal aid societies, the financial ability of litigants to prosecute their own cases is not considered by the NAACP, the Conference and the Fund in soliciting litigants. A person does not have to be indigent for the NAACP, the Conference and the Fund to pay all costs of litigation.

The communications and activities of the NAACP, the Conference and branches, indicate their plans, methods and procedures in obtaining litigants, and may be summarized as follows:

" \* \* \* Mr. Thurgood Marshall, chief legal counsel of the NAACP, has said that the hardest job his staff has had in bringing equal-education suits has been to persuade Negro teachers and representative Negro parents to stand as plaintiffs. \* \* \* " (*The National Association for the Advancement of Colored People; A Case Study in Pressure Groups*, St. James, Exposition Press, Inc., at p. 107.)

In short, the activities of the NAACP, its Conference and the Fund clearly show that they are engaged in fomenting and soliciting legal business in which they are not parties and have no pecuniary right or liability, and which they channel to the enrichment of certain lawyers employed by them, at no cost to the litigants and over which the litigants have no control.

There was evidence on behalf of the Fund in the record of the case of the *National Association for the Advancement of Colored People v. Patty*, *supra*, heard by the three-judge Federal court, and filed as a part of the record in these causes, that it participates in cases only when a prospective litigant appears and requests assistance. However, that does not appear to be the case under the additional evidence taken in these causes, much of which was heard *ore tenus* by the court below. Legal business is solicited by

the NAACP, representatives of the Conference and its legal staff, of which the regional counsel for the Fund is a member, and he and the Fund are fully acquainted with methods and procedures used to obtain litigants to whom the Fund gives assistance. The evidence shows that the regional counsel of the Fund is usually associated with Conference lawyers in school segregation cases, although he is not generally named in the authorization or power of attorney to institute suit.

[3] There is no merit in the appellants' argument that their activities are not what are commonly considered by the legal profession as solicitation of business contrary to the canons of legal ethics. They rely on several cases which are readily distinguishable under the facts from these causes now before us. Typical of the cases cited is *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. 2d 602, 132 A. L. R. 1165.

In the *Gunnels* case the court upheld the right of the Atlanta Bar Association to furnish counsel to persons who had been victims of sharp loan practices. The attorneys did not receive compensation for their services and the Bar Association did not stand between counsel and client or exercise control over the litigation. The usual and proper relationship of attorney and client existed in that case, which does not exist under the evidence in the causes now before us.

In referring to the relationship that should exist between attorney and client, in the case of *Richmond Ass'n of Credit Men v. Bar Association*, 167 Va. 327, 189 S. E. 153, this Court quoted with approval the following (167 Va. at p. 335, 189 S. E. at p. 157):

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the

directions of the corporation and not to the directions of the client.' *Re Co-Operative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 16, 32 L. R. A. (N. S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879."

The acceptance of employment by an attorney in cases in which the NAACP, its Conference and branches act as intermediaries in the solicitation of legal business not only violates chapter 33, but also canons 35 and 47 of the canons of professional ethics adopted by this Court on October 21, 1938, 171 Va. p. xxxii.

Canon 35 reads in part as follows:

"*Intermediaries.*—The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries." 171 Va. p. xxxii.

Canon 47 reads as follows:

"*Aiding the Unauthorized Practice of Law.*—No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." 171 Va. p. xxxv.

In the Ninth Annual Report of the Virginia State Bar, p. 39, is found an opinion, rendered by the Committee on Unauthorized Practice, which is pertinent in these causes. A union retained an attorney on a salary basis to represent all of its individual members in their claims for compensation before the State Industrial Commission. He received no fees from the individuals for such representation. His sole compensation came from the salary paid him by the union. The committee held that the union was engaged in

the practice of law without a license; that it was intervening between the attorney and his clients; and that the attorney was violating the canons of legal ethics.

Courts from other jurisdictions have held that corporations or associations carrying on activities somewhat similar to those of the appellants were engaged in the illegal practice of law and their attorneys were violating the canons of legal ethics. ✓

*In re Maclub of America, Inc.*, 295 Mass. 45, 3 N. E. 2d 272, 105 A. L. R. 1360, an automobile association had been formed for the purpose of furnishing its members with lists of attorneys who would perform services for such members free of charge. The attorneys looked to the association for payment, but the association took no part in the direction or control of the case. The court held that the association was engaged in the illegal practice of law; that the relationship of attorney and client did not exist between the association's members and the attorney; that the particular attorney was compensated by the association and subject to its instructions; that the association possessed the right to hire and fire; and that the practice was considered a contract to furnish legal assistance rather than a contract to pay for legal assistance.

In *People ex rel. Courtney v. Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823, 826, a corporation was organized to permit united protection of certain taxpayers in matters of taxation and legislation. The owners of real estate were invited to become members by the payment of a fee. Attorneys were selected and paid by the corporation to represent it in taxation litigation and the corporation would determine what questions would be litigated. The court held that, even though suits were brought in the names of individual members, and fees would have cost an individual approximately \$200,000, the corporation was engaged in the illegal practice of law.

For other cases, see *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 59, 199 N. E. 1; (a non-profit corporation) *Doughty v. Grills*, 37 Tenn. App. 63, 260 S. W. 2d 379; *Hildebrand v. State Bar of California*, 36 Cal. 2d 504, 225 P. 2d 508; *Atchison, Topeka & Santa Fe Railway Co. v. Jackson* (10 Cir.), 235 F. 2d 390, 393; *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N. E. 2d 163, 167.

[4] The appellants also argue that because they are aiding others in asserting their constitutional rights chapter 33 should not be construed to limit their activities. This argument is without merit. Statutes enacted by the General Assembly in the public interest to regulate the practice of law cannot be violated, and canons of legal ethics should not be ignored simply because constitutional rights are asserted. The law provides a procedure for one to follow in asserting his constitutional rights, as well as all other legal rights, and the objective may be achieved without violating statutes and the standards of the legal profession.

[5] The NAACP next contends that chapter 33 is unconstitutional and void because it violates the rights of freedom of speech and assembly, and denies to it, its affiliates, officers, employees, voluntary workers, attorneys and contributors due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. There is no merit in this contention.

In support of the argument that chapter 33 violates their rights of freedom of speech and assembly, protected under the First Amendment and guaranteed by the Fourteenth Amendment to the Constitution of the United States, they rely on such cases as *Watkins v. United States*, 354 U. S. 178, 77 S. Ct. 1173, 1 L. ed. 2d 1273; *Sweezy v. State of New Hampshire*, 354 U. S. 234, 77 S. Ct. 1203, 1 L. ed. 2d 1311; and *Thomas v. Collins*, 323 U. S. 516; 65 S. Ct. 315, 89 L. ed. 430.



In the *Watkins* case, *supra*, a congressional committee inquired of a witness as to his past associations and he refused to identify his associates during that period on the ground that he did not believe they were now identified with the Communist Party and the questions asked were "outside the proper scope of the committee's activities." On appeal from his conviction for contempt, the Supreme Court held that the pertinency of the question had not been shown; that Congress had not authorized the committee to make an investigation of this nature; and that a conviction for contempt for refusal to answer could not be sustained.

In *Sweezy v. State of New Hampshire*, *supra*, the witness, a teacher in the State university, refused to tell a committee of the state legislature the substance of a lecture he had given at the university, or anything about his opinions and beliefs, on the grounds that the questions were not pertinent to the inquiry and infringed on his freedom of speech, protected under the First Amendment. The court held that the witness was not in contempt, since the resolution of the legislature authorizing the inquiry was not broad enough to permit the question.

Obviously, the holdings in the *Watkins* and *Sweezy* cases have no application here, since the court's decisions rested on the relevancy and pertinency of the questions asked by the committees.

It is true that under the holding in the case of *Thomas v. Collins*, *supra*, representatives of the NAACP and the Conference have a right to peaceably assemble with the members of the branches and other groups to discuss with and advise them relative to their legal rights in matters concerning racial segregation. But under the evidence of the causes before us the appellants and their associates go beyond that. They solicit prospective litigants to authorize the filing of suits by NAACP and Fund lawyers, who are paid by the Conference and controlled by NAACP policies, in violation of chapter 33.

Chapter 33 does not deny the appellants, or those associated with them, freedom to speak and assemble. The purpose and intent of the chapter is to regulate the practice of law and to bring such practice in harmony with the ethical standards of the profession. It prohibits, under certain circumstances, the solicitation of legal business. The prohibition of solicitation of legal business is merely a regulation in the interest of the public and the legal profession.

A State, under its police power, has the right to require high standards of qualifications and ethical conduct from those who desire to practice law within its borders (*Bradwell v. Illinois*, 83 U. S. (16 Wall.) 130, 139, 21 L. ed. 442; *Schwartz v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232, 77 S. Ct. 752, 756, 1 L. ed. 796, 64 A. L. R. 2d 288), and it may revoke or suspend the license to practice law of attorneys who are guilty of unethical conduct. *Richmond Association of Credit Men v. Bar Association*, 167 Va. 327, 334-336, 189 S. E. 153, 157; *Campbell v. Third District Committee*, 179 Va. 244, 249, 250, 18 S. E. 2d 883, 885.

A statute which forbids laymen to solicit employment for attorneys, or engage in the business of furnishing attorneys to render legal services, is a valid police regulation not violative of any constitutional restriction. *McCloskey v. Tobin*, 252 U. S. 107, 40 S. Ct. 306, 64 L. ed. 481; *Hightower v. Detroit Edison Co.*, 262 Mich. 1, 247 N. W. 97, 86 A. L. R. 509; *Kelly v. Bogue*, 239 Mich. 204, 214 N. W. 316, 53 A. L. R. 273; *Chicago, B. & Q. R. Co. v. Davis*, 111 Neb. 737, 197 N. W. 599, 601; 14 C. J. S., *Champerty and Maintenance*, § 35, p. 381; *Anno*, 53 A. L. R., p. 279-280.

[6] We shall now direct our attention to chapter 36 ( §§ 18-349.31 to 18-349.37, inclusive, Code of 1950, as amended, 1958 Cum. Supp.) Acts of Assembly, Ex. Sess.

1956, p. 37, the pertinent parts of which are printed in the margin.<sup>3</sup>

<sup>3</sup> Be it enacted by the General Assembly of Virginia:

1. § 1. (a) It shall be unlawful for any person not having a direct interest in the proceedings, either before or after proceedings commenced:

to promise, give or offer, or to conspire or agree to promise, give or offer, or

to receive or accept, or to agree or conspire to receive or accept, or

to solicit, request or donate.

Any money, bank note, bank check, chose in action, personal services or any other personal or real property, or any other thing of value, or any other assistance as an inducement to any person to commence or to prosecute further any original proceeding in any court of this State, or before any board or administrative agency within the said State, or in any United States court located within the said State against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either of both or any of the foregoing; provided, however, this section shall not be construed to prohibit the constitutional right of regular employment of any attorney at law, for either a fixed fee or upon a contingent basis, to represent such person, firm, partnership, corporation, group, organization or association before any court or board or administrative agency.

(b) It shall be unlawful for any person, not related by blood or marriage or who does not occupy a position of trust or a position in loco parentis to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing.

(c) As used in this act, "person" includes person, firm, partnership, corporation, organization or association; "direct interest" means a personal right or a pecuniary right or liability.

[Continued on page 23a]

This chapter, like chapter 33, deals with the regulation and supervision of the practice of law and is a valid legislative enactment under the State's police power unless it invades rights protected and guaranteed by the State and Federal Constitutions.

The NAACP contends that the chapter is unconstitutional and void because it violates the rights of freedom of speech and assembly and denies to it, its officers, employees, voluntary workers, attorneys and contributors due process of law and the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

On the other hand, the appellees say that the chapter does not violate any constitutional guarantees, and that under

---

[Continued from page 22a]

(d) Any person violating any of the provisions of § 1 of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both.

\* \* \*

§ 6. This act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not protect the client from payment of the costs and expense of litigation, nor shall this act apply to a mandamus proceeding against the State Comptroller, nor shall this act apply to any matter involving zoning, annexation, bond issues, or the holding or results of any election or referendum, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this act apply to suits involving the legality of assessment or collection of taxes or the rates thereof, nor shall this act apply to suits involving rates or charges or services by common carriers or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceedings to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional right of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this State. The provisions hereof shall not affect the right of a lawyer in good faith to advance expenses as a matter of convenience but subject to reimbursement.

the evidence the appellants have violated the statute, which is merely a common law definition of maintenance<sup>4</sup> with the recognized exceptions.

Section 1(a) of the act makes it unlawful, with certain exceptions, for any person not having a "direct interest" in a legal proceeding to promise, give, offer, donate money, personal services, or any other thing of value, or "any other assistance as an inducement to any person to commence or to prosecute further any original proceeding in any court of this State, or before any board or administrative agency within the said State, or in any United States court located within the said State against the Commonwealth of Virginia," its agencies or political subdivisions, or any officer or employee thereof. (Emphasis added.)

Section 1(b) makes it "unlawful for any person, not related by blood or marriage or who does not occupy a position of trust or a position in loco parentis to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose professional advice had not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing." (Emphasis added.)

We have frequently said that the test of the constitutional validity of a law is not merely what has been done under it, but what may by its authority be done. *Edwards v. Commonwealth*, 191 Va. 272, 285, 60 S. E. 2d 916, 922;

<sup>4</sup> Maintenance is "an officious intermeddling in a suit that in no way belongs to one by maintaining or assisting either party with money or otherwise to prosecute or defend it." 4 Blackstone's Commentaries, p. 135. See also 10 Am. Jur., Champerty and Maintenance, § 1, p. 549.

*Richmond v. Carneal*, 129 Va. 388, 393, 106 S. E. 403, 405, 14 A. L. R. 1341; *Violett v. City of Alexandria*, 92 Va. 561, 574, 23 S. E. 909, 913, 31 L. R. A. 382.

Under § 1(a) a friend or neighbor of a poor man is prohibited from aiding him in asserting his claim against the Commonwealth, its agencies or political subdivisions, if his claim does not fall within the exceptions enumerated in § 6 of chapter 36, no matter how meritorious it may be.

The law has always recognized the right of one to assist the poor in commencing or further prosecuting legal proceedings. To deny this right would be oppressive and enable the other party, if his means so permits, an advantage over one with little means. Aiding the indigent is one of the generally recognized exceptions to the law of maintenance. *Gilman v. Jones*, 87 Ala. 691, 5 So. 785, 786-787; *Rice v. Farrell*, 129 Conn. 362, 28 A. 2d 7, 9; 14 C. J. S., Champerty and Maintenance, § 24, p. 368; 4 Blackstone's Commentaries, ch. 10, pp. 135 et seq.

This section denies to an indigent person free access to the courts, both State and Federal, except those within the enumerated class under § 6 of chapter 36, which is a fundamental right of all men, and denies to him due process of law.

A person who desires to aid an indigent suitor, unless his case falls within the expected class, is deprived, under the terms of the act, of his fundamental right to use his property in a lawful manner and is made criminally liable if he does give such aid.

[7] Where the principle of free discussion is concerned, it is the statute and not the accusation or the evidence under it which prescribes the limits of permissible conduct. *Thornhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. ed. 1093.

Under § 1(b) of the act, no person or association, including the appellants, except those within the excepted classification, may advise or counsel any person or group



with respect to instituting or prosecuting actions against the State, its agencies or political subdivisions, or their officers or employees, to assert what these persons or groups may believe are their legal or constitutional rights. Nor may the appellants render financial aid to these people in such litigation, even though the litigants may select and employ counsel of their own choosing, in accordance with the recognized canons of legal ethics.

This section denies the right of freedom of speech, guaranteed by the Virginia Bill of Rights (Constitution § 12), secured by the First Amendment to the Constitution of the United States and guaranteed by the Fourteenth Amendment, which give one the right to hold views on all controversial questions, to express such views, and to disseminate them to persons who may be interested, and neither the Federal nor State government can take any action which might prevent such free and general discussion of public matters as may seem to be essential to prepare people for an intelligent exercise of what they may consider to be their rights as citizens. See 16 C. J. S., Constitutional Law, § 213(1), pp. 1093, 1094, and the many cases there cited.

A state may forbid one to practice law without a license, but it cannot prevent an unlicensed person from making a speech before an assembly, telling them of their rights and urging them to assert same. See *Thomas v. Collins*, *supra*, (concurring opinion, 323 U. S. 516, p. 544, 65 S. Ct. 315, 89 L. ed 430).

State statutes must be specifically directed to acts or conduct which overstep legal limits, and not include those which keep within the protected area of free speech. *Edwards v. Commonwealth*, *supra* (191 Va. at p. 285, 60 S. E. 2d at p. 922).

While the appellants, and those associated with them, cannot solicit and channel legal business to attorneys whom they pay, and who are subject to their directions, in violation of chapter 33, a statute which prohibits them from

advising any person or group to institute suits for the purpose of asserting what they believe to be their legal rights is a denial of the right of freedom of speech, and is unconstitutional and void.

[8] Section 1(b) not only violates the right of freedom of speech, but § 6 of the act exempts from its operation a host of potential litigants, and says in effect that what is a criminal act when done by unexcepted litigants, including the appellants, is not a criminal act when done by excepted litigants. There is no reasonable basis for excepting a great number of litigants from the application of the act while making it applicable to others. Thus it denies to the unexcepted litigants the equal protection of the laws.

Equal protection of the laws, guaranteed under the Fourteenth Amendment, does not preclude a State from resorting to classification for purposes of legislation, but such classification must be reasonable and not arbitrary, and rest on some ground of difference or distinction which bears a fair and substantial relation to the subject or object of legislation, so that all persons similarly situated shall be treated alike. *C. I. T. Corp. v. Commonwealth*, 153 Va. 57, 68, 149 S. E. 523, 525, 526; *Bryce v. Gillespie*, 160 Va. 137, 143, 168 S. E. 652, 655.

For the reasons given, we hold:

(1) That chapter 33 is a valid regulation of the practice of law, enacted under the police power of the State, and is not violative of any constitutional restrictions;

(2) That the solicitation of legal business by the appellants, their officers, members, affiliates, voluntary workers and attorneys, as shown by the evidence, violates chapter 33 and the canons of legal ethics;

(3) That the attorneys who accept employment by appellants to represent litigants in suits solicited by the appellants, or those associated with them, are violating chapter 33 and the canons of legal ethics;

(4) That chapter 36 is unconstitutional and void because it violates the right of freedom of speech under both the State and Federal Constitutions and denies due process of law and equal protection of the laws under the Fourteenth Amendment. Therefore,

(a) the appellants and those associated with them may not be prohibited from acquainting persons with what they believe to be their legal rights and advising them to assert their rights by commencing or further prosecuting a suit against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee of such, but in so advising persons to commence or further prosecute such suits the appellants, or those associated with them, shall not solicit legal business for their attorneys or any particular attorneys; and

(b) the appellants and those associated with them may not be prohibited from contributing money to persons to assist them in commencing or further prosecuting such suits, which have not been solicited by the appellants or those associated with them, and channeled by them to their attorneys or any other attorneys.

The decree appealed from is affirmed in part, reversed in part and remanded for the entry of a decree consistent with the views expressed herein.

*Affirmed in part; reversed in part; and remanded.*

**(Judgment)**

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the decree aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is error only in part of the decree appealed from. It is therefore adjudged, ordered and decreed that the said decree, in so far as it holds that Chapter 33, Acts of Assembly, Extra Session, 1956, is a constitutional and valid enactment, and that the appellant and those connected with it in carrying out the activities of the appellant are in violation of the provisions of this chapter, be, and the same is hereby affirmed.

It is further adjudged, ordered and decreed that the said decree, in so far as it holds that Chapter 36, Acts of Assembly, Extra Session, 1956, is a constitutional and valid enactment, be, and the same is hereby reversed and annulled, and the cause is remanded to the said circuit court for the entry of a decree consistent with the views expressed in the said written opinion of this court.

And the appellees having substantially prevailed, it is further adjudge and ordered and decreed that the appellant pay to the appellees their costs by them expended about their defense herein.

Entered: September 2, 1960

**(Denial of Petition for Rehearing)**

(Filed October 12, 1960)

On mature consideration of the petition of National Association for the Advancement of Colored People, a corporation, appellant, to set aside the decree entered herein on September 2, 1960, and grant a rehearing thereof, the prayer of the said petition is denied.

## APPENDIX B

(Opinion of the United States District Court for the  
Eastern District of Virginia Entered January 21, 1958)

---

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED  
PEOPLE, a corporation, NAACP, LEGAL DEFENSE AND EDU-  
CATIONAL FUND, INC., a corporation,

Plaintiffs,

*against*

KENNETH C. PATTY, Attorney General for the Common-  
wealth of Virginia, et al.,

Defendants.

---

Before:

SOPER, Circuit Judge and

HUTCHESON and HOFFMAN, District Judges.

HUTCHESON, District Judge concurring in part and dis-  
senting?

---

SOPER, Circuit Judge:

These companion suits were brought by the National Association for the Advancement of Colored People and the N. A. A. C. P. Legal Defense and Educational Fund, Inc., corporations of the State of New York, against the Attorney General of the Commonwealth of Virginia and the Commonwealth Attorneys for the City of Richmond, the City of Newport News, the City of Norfolk, Arlington County and Prince Edward County, Virginia, to secure a declaratory judgment and an injunction restraining and en-joining the defendants from enforcing or executing Chap-  
ters 31, 32, 33, 35 and 36 of the Acts of Assembly of the

---

These Acts have been respectively codified in the Code of Virginia at §§ 18-349.9 *et seq.*, 18-349.17 *et seq.*, 54-74, 78, 79, 18-349.25 *et seq.*, and 18-349.31 *et seq.*

Commonwealth, all of which were passed at the Extra Session convened between August 27, 1956, and September 29, 1956, and were approved by the Governor of the Commonwealth on September 29, 1956.

The suits are based on the allegation that the statutes are unconstitutional and void, in that they deny to the plaintiffs rights accorded to them by the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction is invoked under the civil rights statutes, 42 U. S. C. §§ 1981 and 1983 and 28 U. S. C. § 1343, under which the district courts have jurisdiction of actions brought to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution or statutes of the United States providing for equal rights of all persons within the jurisdiction of the United States. Jurisdiction is also invoked under 28 U. S. C. §§ 1331 and 1332 wherein jurisdiction is conferred upon the federal courts in all civil actions where the matter in controversy exceeds the sum of \$3,000.00 exclusive of interest and costs and arises under the Constitution and law of the United States or between citizens of different states. Accordingly, the present three-judge district court was set up under 28 U. S. C. § 2281 and evidence was taken upon which the following findings of facts are based.

The National Association for the Advancement of Colored People is a non-profit membership organization which was established in 1909 and incorporated under the laws of the State of New York in 1911. It is licensed to do business as a foreign corporation in the State of Virginia. The purposes of the corporation are set out in the statement of its charter:

"That the principal objects for which the corporation is formed are voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interests of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their



children, employment according to their ability, and complete equality before the law.

"To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects."

The activities of the Association cover forty-four states, the District of Columbia and the Territory of Alaska. It is the most important Negro rights organization in the country (see 6 Western Res. L. Rev. 101, 102; 58 Yale L. J. 574, 581), having approximately 1,000 unincorporated branches. A branch consists of a group of persons in a local community who enroll the minimum number of members and upon formal application to the main body are granted a charter. In Virginia, there are eighty-nine active branches. A person becomes a member of a branch upon payment of dues which amount, at a minimum, to \$2.00 per year and may be more at the option of the member, up to the sum of \$500.00 for life membership. The regular dues of \$2.00 per year are divided into two parts, one-half being sent to the national office in New York and one-half retained by the local branch.

In a number of states, including Virginia, the branches are voluntarily grouped into an unincorporated State Conference, the expenses of which are paid jointly by the national organization and the local branches, each contributing 10-cents out of its share of each member's dues. In Virginia, the branches contribute a greater sum for the support of their State Conference.

The principal source of income of the Association and its branches in the several states consists of the membership fees which are solicited in local membership drives. Other income is derived from special fund raising campaigns and individual contributions. In the first eight months of the year the greater number of annual membership drives

are conducted. During that period in 1957 the Association enrolled 13,595 members in Virginia. This represents a sharp reversal of the rising trend in membership figures in the same eight-month period in the preceding three years, which showed 13,583 members in 1954, 16,130 in 1955 and 19,436 in 1956. The income of the Association from its Virginia branches during the first eight months of 1957 was \$37,470.60 as compared with \$43,612.75 for the same period in 1956. The total amount received by the Association from Virginia was \$38,469.59 in the first eight months of 1957 as compared with \$44,138.71 for the same period in 1956. The total income of the Association from the country as a whole for the year 1956 was \$598,612.84 and \$425,608.13 for the first eight months of 1957.

At the top of the organizational structure of the national body is the annual convention, which consists of delegates representing the 1,000 branches in the several states. It has the power to establish policies and programs for the ensuing year which are binding upon the Board of Directors and upon the branches of the Association. Each year the convention chooses sixteen members of a Board of forty-eight Directors, each of whom serves for a term of three years. The Board of Directors meets eleven times a year to carry out the policies laid down by the convention. Under the Board an administrative staff is set up, headed by an executive secretary who, representing the Board, presides over the functioning of the local branches and State Conferences throughout the country under the authority of the constitution and by-laws of the national body.

The Virginia State Conference takes the lead of the Association's activities in the state under the administration of a full-time salaried executive secretary, by whom the activities of the branches in the state are co-ordinated and local membership and fund raising campaigns are supervised. The State Conference also holds annual conventions attended by delegates from the branches, who elect officers and members of the Board of Directors of the

Conference. Through its representatives the State Conference appears before the General Assembly of Virginia and State Commissions in support of or in opposition to measures which in its view advance or retard the status of the Negro in Virginia. It encourages Negroes to comply with the statutes of the state so as to qualify themselves to vote, and it conducts educational programs to acquaint the people of the state with the facts regarding racial segregation and discrimination, and to inform Negroes as to their legal rights and to encourage the assertion of those rights when they are denied. In carrying out this program, the public is informed of the policies and objectives of the Association through public meetings, speeches, press releases, newsletters and other media.

One of the most important activities of the State Conference, perhaps its most important activity, is the contribution it makes to the prosecution of law suits brought by Negroes to secure their constitutional rights. It has been found, through years of experience, that litigation is the most effective means to this end when Negroes are subjected to racial discrimination either by private persons or by public authority. Accordingly, the Virginia State Conference maintains a legal committee or legal staff composed of thirteen colored lawyers located in seven communities scattered over the greater part of the state. The members of the legal staff are elected at the annual convention of the State Conference and they in turn elect a chairman. Ordinarily the legal staff is called into action upon a complaint made to one or more members of the staff by aggrieved parties, but sometimes a grievance is brought directly to the attention of the Executive Secretary of the Conference, and if in his judgment the case presents a genuine grievance involving discrimination on account of race or color, which falls within the scope of the work of the Association, he refers the parties to the Chairman of the legal staff. If the Chairman approves the complaint, he recommends favorable action to the President of the State Conference.

and if he concurs, the Conference obligates itself to defray in whole or in part the costs and expenses of the litigation. With rare exceptions the attorneys selected by the complainant to bring the suit have been members of the legal staff. When a law suit has been completed the attorney is compensated by the Conference for out-of-pocket expenditures, including travel and stenographic services, and is also paid per diem compensation for the time spent in his professional capacity. No money ever passes directly to the plaintiff or litigant. The attorneys appear in the course of the litigation for and on behalf of the individual litigants, who in every instance authorize the institution of the suit.

In brief, the Association, in various forms, publicizes its policies against discrimination and informs the public that it will offer aid for the prosecution of a legitimate complaint involving improper discrimination. Thus it is generally known that the State Conference will furnish money for litigation if the proper need arises, but the Association does not take the initiative and does not act until some individual comes to it asking for help.

Sometimes a complainant seeks damages for violation of his rights, as in cases involving the treatment accorded Negroes in public conveyances. In such a case, the Association ordinarily does not furnish aid if the complainant is financially able to prosecute his claim. In the most fruitful field of litigation in respect to public education, the rights of large numbers of colored people in the community are involved and a class suit is brought; and the Association pays the expenses even if one or more of the complainants is possessed of financial resources. In most of these cases the expenses of the suit are so great that it could not be prosecuted without outside aid. The fees paid the lawyers are modest in size and less than they would ordinarily earn for the time consumed.

The N. A. A. C. P. Legal Defense and Educational Fund, Inc., the plaintiff in the second suit, also takes a prominent part in support of litigation on behalf of Negro citizens.

It is a membership corporation which was incorporated under the law of the State of New York in 1940. Like the Association, the Fund is registered with the Virginia Corporation Commission as a foreign corporation doing business in the state. It was formed, as its name implies, to assist Negroes to secure their constitutional rights by the prosecution of law suits of the sort that have just been described. The charter declares that its purposes are to render legal aid gratuitously to Negroes suffering "legal injustice" by reason of race or color who are unable on account of poverty to employ and engage legal aid on their own behalf. Other purposes are to secure educational facilities for Negroes who are denied the same by reason of their race and color and to conduct research and to compile and publish information on this subject and generally on the status of the Negro in American life. The charter forbids the corporation to attempt to influence legislation by propaganda or otherwise and requires it to operate without pecuniary benefit to its members. The charter was approved by a New York court after service upon and without objection from the local bar association so that it obtained the right under the law of New York to operate as a legal aid society.

The Fund is governed by a Board of Directors which, under its charter, consists of not less than five and not more than fifty members. Its work is directed by the usual executive officers. It operates from an office in New York City and has no subordinate units. It employs a full-time staff of six resident attorneys and three research attorneys stationed in New York City, and it keeps four lawyers on annual retainers in Richmond, Dallas, Los Angeles and Washington. It also engages local attorneys for investigation and research in particular cases. It has on call one hundred lawyers throughout the country and a large number of social scientists who operate on a voluntary basis and work without pay or upon the payment of expenses only. By virtue of its efforts to secure equal rights and



opportunities for colored citizens in the United States, the Fund has become regarded as an instrument through which colored citizens of the United States may act in their efforts to combat unconstitutional restrictions based upon race and color.

In order to give information as to the nature of the work of the Fund, members of the legal staff engage in public speaking and lectures in colleges and universities throughout the country on a variety of subjects connected with the legal rights of colored citizens and the race problem in general. But in conformity with the charter of the Fund, the officers and employees of the corporation do not attempt to influence legislation, by propaganda or otherwise.

It is apparent that so far as litigation is concerned the purposes of the Association and of the Fund are identical, and they in fact cooperate in this activity. They are, however, separate corporate bodies with separate offices. At one time some of the executive officers were in the employ of both corporations but at the present no person serves as an officer or employee, although many persons are members of both bodies. The Fund was formed as a separate organization because it was thought that it should have no part in attempting to influence legislation and the complete separation has been promoted by rulings of the Treasury Department, which disallow tax deductions for contributions to organizations engaged in political activity. Deductions for contributions to the Fund are allowed.

The revenues of the Fund are derived solely from contributions received in response to letters sent out four times a year throughout the country by the Committee of One Hundred and, to some extent, from solicitations at small luncheons or dinners. There are no membership dues. The Committee of One Hundred was organized in 1941 by Dr. Neilsen, former president of Smith College, and consists predominantly of educators and lawyers who



have joined together for the purpose of raising the money necessary to keep the organization going. Most of the money comes in the form of \$5.00 and \$10.00 contributions. Substantial sums are received from charitable foundations, of which the largest was \$15,000 and the aggregate was \$50,000 in 1956. For the four or five years prior to 1957 the income showed a steady increase. The income for 1956 was \$351,283.32. For the first eight months of 1955, 1956 and 1957 the income was \$152,000.00, \$246,000.00 and \$180,000.00, respectively. The receipts from Virginia were \$1,469.50 in 1954; \$6,256.19 in 1955, a portion of which was a refund from prior litigation; \$1,859.20 in 1956, and \$424.00 for the first eight months in 1957.

The total disbursements of the Fund for the year 1956 were \$268,279.03. The total expenses for Virginia during the past four years consisted principally of the sum of \$6,000.00, which was the annual retainer of the regional counsel.

The Fund supplements the work of the legal staff of the Virginia State Conference by contributing the services of the regional counsel and, more particularly, by furnishing results of the research of scientists, lawyers and law professors in various parts of the country. The Fund also contributes the very large expenditures which are needed for the prosecution of important cases that go from the federal courts in Virginia and other states to the Supreme Court of the United States in which the fundamental rules governing racial problems are laid down. In this class of case the expenses amount to a sum between \$50,000 and \$100,000, and in the celebrated case of *Brown v. Board of Education*, the expenses amounted to a sum in excess of \$200,000. The expenses of cases tried in the lower courts, including an appeal to the Court of Appeals for the Circuit, amount to approximately \$5,000.00.

The Fund has made only a superficial investigation into the financial competency of complainants to whom it has rendered aid in Virginia. For the most part the cases have been class actions brought for the benefit of all the

colored citizens in a community with children in the local public schools and the regional counsel of the Fund has entered the cases at the request of members of the legal staff of the State Conference. It has been obvious in such instances that the burden of the litigation was too great for the individual litigants to bear, and the lawyers for the Fund have not regarded their participation as a violation of the charter provision authorizing the Fund to aid indigent litigants even if it was shown that some of the complainants in a case had legal title to homes of substantial value.<sup>2</sup>

#### STATUTES IN SUIT

The five statutes against which the pending suits are directed, that is, Chapters 31, 32, 33, 35 and 36 of the Acts of the General Assembly of Virginia, passed at its Extra Session in 1956, were enacted for the express purpose of impeding the integration of the races in the public schools of the state which the plaintiff corporations are seeking to promote. The cardinal provisions of these statutes are set forth generally in the following summary.

Chapters 31 and 32 are registration statutes. They require the registration with the State Corporation Commission of Virginia of any person or corporation who engages in the solicitation of funds to be used in the prosecution of suits in which it has no pecuniary right or liability, or in suits on behalf of any race or color, or who engages as one of its principal activities in promoting or opposing the passage of legislation by the General Assembly on behalf of any race or color, or in the advocacy of racial integration or segregation, or whose activities

---

<sup>2</sup> Testimony as to the activities of the Association and of the Fund was given in large part by Roy Wilkins, executive secretary of the Association; Thurgood Marshall, director counsel of the Fund; W. Lester Banks, executive secretary of the Virginia State Conference; Oliver W. Hill, chairman of the legal staff of the Virginia State Conference; Spotswood W. Robinson III, southeast regional counsel for the Fund.

tend to cause racial conflicts or violence. Penalties for failure to register in violation of the statutes are provided.

Chapters 33, 35 and 36 relate to the procedure for suspension and revocation of licenses of attorneys at law, to the crime of barratry and to the inducement and instigation of legal proceedings. It is made unlawful for any person or corporation: to act as an agent for another who employs a lawyer in a proceeding in which the principal is not a party and has no pecuniary right or liability; or to accept employment as an attorney from any person known to have violated this provision; or to instigate the institution of a law suit by paying all or part of the expenses of litigation, unless the instigator has a personal interest or pecuniary right or liability therein; or to give or receive anything of value as an inducement for the prosecution of a suit, in any state or federal court or before any board or administrative agency within the state, against the Commonwealth, its departments, subdivisions, officers and employees; or to advise, counsel, or otherwise instigate the prosecution of such a suit against the Commonwealth; etc., unless the instigator has some interest in the subject or is related to or in a position of trust toward the plaintiff. Penalties for the violation of these statutes are provided.

The legislative history of these statutes to which we now refer conclusively shows that they were passed to nullify as far as possible the effect of the decision of the Supreme Court in *Brown v. Board of Education*, 347 U. S. 483 and 349 U. S. 294.

#### LEGISLATIVE HISTORY OF STATUTES IN SUIT

On May 17, 1954, the Supreme Court in *Brown v. Board of Education*, 347 U. S. 483, after argument and reargument, denounced the segregation of the races in public education as a violation of the equal protection clause of the Fourteenth Amendment, and requested the parties as well as the attorneys general of the affected states to

file briefs and present further argument to assist the court in formulating its decrees.

On May 31, 1955, the Supreme Court, after further argument, reaffirmed its position, reversed the judgments below and remanded the cases to the lower courts to take such proceedings as should be necessary and proper to admit the parties to the public school on a racially non-discriminatory basis with all deliberate speed.

Amongst the cases in the group considered by the Supreme Court was *Davis v. County School Board of Prince Edward County, Virginia*, which was instituted on May 23, 1951, on behalf of colored children of high school age in that county. The case had been tried by a three-judge district court after the Commonwealth of Virginia had been permitted to intervene. The court upheld the validity of the constitutional and statutory enactments of the state which required the segregation of the races in the state schools, but found that the buildings, curricula and transportation furnished the colored children were inferior to those furnished the white children and ordered the defendants to remedy the defects with diligence and dispatch. 103 F. Supp. 337. As we have seen, this decision was reversed by the Supreme Court on the constitutional point and the duty to eliminate segregation was directly presented to the state authorities.<sup>3</sup> Their reaction is depicted in the following recital.

<sup>3</sup> On the same day, in *Bolling v. Sharpe*, 347 U. S. 497, the Court held that segregation in the public schools in the District of Columbia is a denial of the due process clause of the Fifth Amendment.

<sup>4</sup> On remand, after the filing of numerous motions and the rendering of arguments thereon, the Court entered a decree enjoining racial discrimination in school admission but refused to set a time limit within which the Board should begin compliance, observing the likelihood of the schools being closed under state law. 149 F. Supp. 431. This refusal was reversed on appeal. *Allen v. County School Board of Prince Edward County, Va.* 4 Cir. — F. 2d —.

On August 30, 1954, the Governor of Virginia appointed the Gray Commission on Public Education, composed of thirty-two members of the General Assembly, and directed it to study the effect of the segregation decision and make such recommendations as might be deemed proper. The Commission submitted its final report to the Governor on November 11, 1955. Referring to prior decisions of the Supreme Court and to the non-judicial authority cited by it in support of the segregation decision, the Commission characterized the latter in the following terms:

"With this decision, based upon such authority, we are now faced. It is a matter of the gravest import, not only to those communities where problems of race are serious, but to every community in the land, because *this decision transcends the matter of segregation in education*. It means that irrespective of precedent, long acquiesced in, the Court can and will change its interpretation of the Constitution at its pleasure, disregarding the orderly processes for its amendment set forth in Article V thereof. It means that the most fundamental of the rights of the states and of their citizens exist by the Court's sufferance and that the law of the land is whatever the Court may determine it to be by the process of judicial legislation."

The Commission's general conclusion was that "separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power". To this end the Commission recommended that a special session of the General Assembly be called to authorize the holding of a constitutional convention in order to amend § 141 of the Constitution of Virginia which shortly before had been held by the Supreme Court of Appeals of Virginia in *Almond v. Day*, 197 Va. 419, to prohibit the payment of tuition and other expenses of students who may not desire to attend public schools. The Commission also recommended that legislation be passed

conferring broad discretion upon the school authorities to assign pupils in the public schools and to provide for the expenditure of State funds in the payment of tuition grants so as to prevent enforced integration. In response to this recommendation, the General Assembly, on December 3, 1955, meeting in Extra Session, enacted a bill submitting to the voters of the state the question whether such a convention should be held, and on January 9, 1956, the holding of the convention was approved by the voters.

On February 1, 1956, the General Assembly in its regular session adopted an "interposition resolution" by votes of 36-to-2 in the Senate and 90-to-5 in the House of Delegates. In this resolution the following declarations were included:

"That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves;

"That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;

"That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt of the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States;

"(That Virginia) . . . anxiously concerned at this massive expansion of central authority, is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens.



“And be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States.”

The constitutional convention authorized by the voters was held on March 7, 1956, and amended § 141 of the constitution of the state in accordance with the recommendation of the Gray Commission.

On August 27, 1956, the General Assembly was convened in Extra Session in response to the call of the Governor of the State. He made an opening address to the assembled lawmakers, in the course of which he said:

“The people of Virginia and their elected representatives, are confronted with the gravest problems since 1865. Beginning with the decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all our people in this Commonwealth, and throughout the South.

“Because of the events I have just mentioned, I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools \* \* \* \* \*

“The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly. The declaration reads, in part, as follows:

---

\* Sec. 73 of the Virginia Constitution provides: “The Governor shall . . . recommend to (the General Assembly’s) consideration such measures as he may deem expedient, and convene the General Assembly . . . when, in his opinion, the interest of the State may require.”

The General Assembly declares, finds and establishes as a fact that the mixing of white and colored children in any elementary or secondary public school within any county, city or town of the Commonwealth constitutes a clear and present danger and that no efficient system of elementary and secondary public schools can be maintained in any county, city or town in which white and colored are taught in any such school located therein.

The bill then defines efficient systems of elementary and secondary public schools as those systems within a county, city or town in which there is no student-body, in the respective categories, in which white and colored children are taught. Following these definitions is this further declaration:

The General Assembly for the purpose of protecting the health and welfare of the people and in order to preserve and maintain an efficient system of public elementary and secondary schools hereby declares and establishes it to be the policy of this Commonwealth that no public elementary or secondary schools in which white and colored children are mixed and taught shall be entitled to or shall receive any funds from the State Treasury for their operation, and, to that end, forbids and prohibits the expenditure of any part of the funds appropriated for the establishment and maintenance of any system of public elementary or secondary schools, which is not efficient.

This policy is in harmony with § 129 of the State Constitution, which provides that "The General Assembly shall establish and maintain an efficient system of public free schools throughout the state." Manifestly, integration of the races would make impossible the operation of an efficient system. By this proposed legislation, the General Assembly, properly exercising its authority under the Constitution, will clearly define what constitute an efficient system for which State appropriations are made.

The purpose for which the Extra Session was called was emphasized in the following exhortation with which the Governor concluded his address:

"The proposed legislation recognizes the fact that this is the time for a decisive and clear answer to these questions:

"(1) Do we accept the attempt of the Supreme Court of the United States, without constitutional or any other legal basis, to usurp the rights of the States and dictate the administration of their internal affairs? (2) Do we accept integration? (3) Do we want to permit the destruction of our schools by permitting 'a little integration' and witness its subsequent sure and certain insidious spread throughout the Commonwealth? My answer is a positive 'No'. On the other hand, shall we take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers? My answer is a definite 'Yes' and I believe it is to be the answer of the vast majority of the white people of Virginia, as well as the answer of a large, if unknown, number of Negro citizens."

The Legislature responded at once to the Governor's appeal. The principal bill to which he referred in his address became Chapter 71 of the Acts passed at the Extra Session. It appropriated funds for the maintenance of the elementary and secondary schools of the state for the ensuing biennium and included the declarations above set out, whereby the use of the funds for integrated schools are prohibited. An accompanying Act, Chapter 70, known as the Pupil Placement Act, requires each pupil to attend his present segregated school unless a transfer is authorized by a Pupil Placement Board appointed by the Governor; and the Board is required to consider the effect of its decisions upon the efficiency of the schools which, according to the declarations of the Legislature, can be maintained only by preserving segregation of the races. A review of the decisions of the Board is provided through a cumbersome and costly procedure. Another companion

statute, Chapter 68, provides that if children of both races are enrolled in the same school by any school authorities acting voluntarily or under the compulsion of an order of court, the school shall be closed and removed from the public school system and the control of the school shall be vested in the state and not reopened until the Governor finds that it can be done without enforcing integration.

The Pupil Placement Act was considered at length and held unconstitutional by this court in *Adkins v. School Board of the City of Newport News*, 148 F. Supp. 430, wherein the terms of the Act are set out in full and the legislative history is reviewed. The opinion of the court pointed out that the administrative remedy afforded to an aggrieved person by the Act would consume at least 105 days between the filing of the protest and the final decision which was lodged in the hands of the Governor. On appeal the judgment of the District Court was affirmed, 246 F. 2d 325, cert. den. — U. S. —.

#### EFFECT OF PASSAGE OF STATUTES IN SUIT

It was in this setting<sup>6</sup> that the Acts now before the court were passed as parts of the general plan of massive re-

<sup>6</sup> While it is well settled that a court may not inquire into the legislative motive (*Tenney v. Brandhove*, 341 U. S. 367, 377), it is equally well settled that a Court may inquire into the legislative purpose. (See *Laskin v. Brown*, 4 Cir., 174 F. 2d 391, 392-393, and *Davis v. Schnell*, 81 F. Supp. 872, 878-880, aff'd 336 U. S. 933, in which state efforts to disenfranchise Negroes were struck down as violative of the Fifteenth Amendment.) Legislative motive—good or bad—is irrelevant to the process of judicial review; but legislative purpose is of primary importance in determining the propriety of legislative action, since the purpose itself must be within the legislative competence, and the methods used must be reasonably likely to accomplish that purpose. Because of this necessity, a study of legislative purpose is of the highest relevance when a claim of unconstitutionality is put forward. Usually a court looks into the legislative history to clear up some statutory ambiguity, as in *Davis v. Schnell*, 81 F. Supp. at 878; but such ambiguity is not the *sine qua non* for a judicial inquiry into legislative history. See the decision in *Lane v. Wilson*, 307 U. S. 268, in which the Supreme Court showed that the state statute before the court was merely an attempt to avoid a previous decision in which the "grandfather" clause of an earlier statute had been held void.

sistance to the integration of schools of the state under the Supreme Court's decrees. The agitation involved in the widespread discussion of the subject and the passage of the statutes by the Legislature have had a marked effect upon the public mind which has been reflected in hostility to the activities of the plaintiffs in these cases. This has been shown not only by the falling off of revenues, indicated above, but also by manifestations of ill will toward white and colored citizens who are known to be sympathetic with the aspirations of the colored people for equal treatment, particularly in the field of public education. A number of white citizens who attempted to give aid to the movement by speaking out on behalf of the colored people, or by taking membership in the Association, or joining the complainants in school suits, have been subjected to various kinds of annoyance. When their names appeared in the public press in connection with these activities they were besieged day and night by telephone calls which were obscene, threatening, abusive, or merely silent interruptions to the peace and comfort of their homes. Letters and telegrams of like nature were also received. Some of these persons found themselves cut by their friends and made unwelcome where they had formerly been received with kindness and respect. Two crosses were burned near the homes of two of them; an effigy was hung in the yard of a white plaintiff in a school case, and a hearse was sent to the home of the colored president of the Norfolk branch of the Association during his absence "to pick up his body." The last mentioned person was also chairman of the local branch of a labor union and a man of prominence in his community. He had been active and successful in directing membership campaigns for the Association in prior years but in 1957 he found that the solicitors were unwilling to continue their work. Colored lawyers on the State Conference legal staff were assailed with fear that enforcement of the statutes now before this court would result in loss of their licenses to practice

should they continue their activities on the Association's behalf. Numerous newspaper articles offered in evidence show that the proposal to integrate the schools was a prime subject of public interest and discussion throughout the state. They are received over objections by the defendants only as evidence of this fact and not to prove the accuracy of the statements therein contained. In view of all the evidence, we find that the activities of the State authorities in support of the general plan to obstruct the integration of the races in schools in Virginia, of which plan the statutes in suit form an important part, brought about a loss of members and a reduction of the revenues of the Association and made it more difficult to accomplish its legitimate aims.

The defendants on their own behalf produced as witnesses six of the plaintiffs in the Prince Edward County school case. All of them had been visited by representatives of the Boatwright Committee of the Legislature, which had been created by Chapter 34 of the Acts passed at the Extra Session, and had been authorized to make a thorough investigation into the activities of corporations or associations which seek to influence, encourage or promote litigation relating to racial activities in the State. These witnesses testified either that they did not know that they were parties to the Prince Edward suit or that they merely wanted better schools for their children and did not want integrated schools. They also testified that they suffered no mistreatment by reason of their names being used as plaintiffs in the suit. The evidence, however, shows that the first step leading to the litigation in Prince Edward County was a strike of the children in the colored high school who refused to attend classes for a period of two weeks as a protest against the undesirable conditions in the school. After the strike there were meetings of the parents in the school building and in the nearby Baptist Church which were addressed by lawyers of the legal staff of the Virginia State Conference of the Associa-



tion, who were in attendance at the request of the parents of the children, as well as by other persons. The speakers expressed the opinion that in order to secure fair treatment for the colored pupils it would be necessary to institute a suit for the establishment of an integrated school. It was further shown that each of the six witnesses had signed a paper authorizing Hill, Martin and Robinson, attorneys, to act for and on behalf of them and their children to secure such educational opportunities as they might be entitled to under the Constitution and laws of the United States and to represent them in all suits of whatever kind pertaining thereto. The record in the Prince Edward case shows that 186 persons were joined as parties plaintiff.

The Attorney General of Alabama testified as to racial disturbances and disorders in 1955 and 1956 arising in his State in connection with the attempt to enroll colored students in white schools and involving acts of violence and personal injury to colored persons. He attributed these activities in large part to white men associated in a splinter organization of the Ku Klux Klan and expressed the opinion that the registration of members of the organization under an act like Chapter 32 in this case would aid in the identification and successful prosecution of the offenders. Similarly he thought it would be helpful to require the registration of members of a Negro organization in Tuskegee, which succeeded in some measure to the work of the N. A. A. C. P. after it had been enjoined from operating in Alabama and had engaged in boycotting white merchants in the community and for this purpose had engaged in threats and acts of intimidation. The Attorney General conceded that he was hostile to the N. A. A. C. P. and had filed suit against it in his State demanding a list of its members, but that he had not filed such suit against the Ku Klux Klan.

The Sheriffs of four southside Virginia counties in which the negro population ranges from 45 per-cent to 54

per-cent and in one instance to 77 per-cent of the total, testified that the relation of the races in their jurisdictions was good but that in their opinion integration in the public schools would result in disturbances and, perhaps, in bloodshed; and that a list of persons active in racial matters would aid them in preserving the peace and in selecting deputies to enforce the law. We find that the opposition to integration in the public schools is especially strong in this section of Virginia. The Superintendent of the Virginia State Police agreed with the opinion that lists of persons active in racial matters would help law enforcement even though the lists might contain thirteen or fourteen thousand names.

A representative of the law department of the Association of American Railroads testified for the defendants that through investigations he had become familiar with the solicitation of personal injury claims by attorneys, and generally with the offenses of barratry and running and capping; and that such activities occur in Virginia and that the information required to be filed under Chapter 31 of the Acts of the Extra Session would be helpful in investigating such activities.

Mr. C. Harrison Mann, Jr., a lawyer and a delegate to the General Assembly, testified on behalf of the defendants that he was the chief patron of the Acts of Legislature now in suit and that he was moved by two purposes in connection with the legislation. He was alarmed at the activities of a white leader who is violently fighting integration in the eastern part of the United States and was operating in Washington shortly before the Extra Session convened. It was the opinion of the witness that these activities would lead to racial tension and possibly violence and that it was highly desirable that the identities of the responsible people be made known by registration. With respect to the passage of the Acts relating to the practice of law in Virginia, the delegate was influenced by reports in the press that certain persons were joined

as plaintiffs in the Prince Edward suit without knowledge that integration of the races in the schools was at issue and that in other parts of the country there were reports that the Association was soliciting the institution of suits by plaintiffs and practicing law, which he considered to be a breach of legal ethics and bad public policy. He also gave evidence that he was subject to abuse from various sources by reason of his activities.

#### DEFENDANTS' MOTION TO DISMISS

##### *Civil Rights of Corporations*

After the institution of the pending suits the defendants filed motions to dismiss in each case on the ground that the complaints did not state a controversy over which the court had jurisdiction. The motions were dismissed after argument and the defendants were required to answer with leave to renew the contention after the hearing on the evidence. They now dispute the jurisdiction of the Court, first, on the ground that a corporation is not a person entitled to bring suit for deprivation of rights, privileges or immunities granted by the Constitution or laws of the United States under 42 U. S. C. 1983, over which jurisdiction is conferred upon the district courts by 28 U. S. C. § 1343(3). It is pointed out that these sections are derived from the Civil Rights Act of 1871, which was enacted to give effect to the provisions of the Fourteenth Amendment and thereby to prevent the deprivation of the rights of natural persons under the color of any state law. Reliance is placed chiefly on the concurring opinion of Justice Stone in *Hague v. C. I. O.*, 307 U. S. 496, where suit was brought by individual citizens and a membership corporation who claimed that under an ordinance of Jersey City they were deprived of the privilege of free speech and free assembly secured to them as citizens of the United States by the Fourteenth Amendment. The ordinance was held unconstitutional as an undue restriction of these rights and

relief was granted to the individual plaintiffs but denied to a corporate plaintiff for the reason expressed in the opinion of Justice Roberts (page 514) that "natural persons and they alone are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for citizens of the United States". This holding that corporations are not "citizens" within this clause of the Fourteenth Amendment is not disputed; but Justice Stone, who concurred in the judgment but differed with the reasons expressed by his colleagues, wrote a separate opinion in which he went further and made the following statement (page 527):

"Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by § 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons. *Northwestern Life Ins. Co. v. Riggs*, 203 U. S. 243, 255; *Western Turf Assn. v. Greenberg*, 204 U. S. 359, 363."

This pronouncement supports the defendants' position but it cannot be said to be a controlling authority since it did not represent the views of the majority of the Court but was concurred in only by Justice Reed (see *City of Manchester v. Leiby*, 1 Cir., 177 F. 2d 661, 663, 664).

It is of more importance to note that the opinion of Justice Stone did not discuss the prior decision of the Court in *Grosjean v. American Press Co.*, 297 U. S. 233, where a license tax on advertisement was held invalid at the suit of a newspaper corporation. The Court held (page 244) that freedom of speech and of the press are fundamental rights safeguarded by the due process of law clause of the Four-

teenth Amendment against abridgement by state legislation, and although a corporation is not a *citizen* within the meaning of the privileges and immunities clause, it is a *person* within the meaning of the equal protection and due process clause of that amendment. In other words, the corporation was accorded rights to which it would not have been entitled if the rule announced by Justice Stone had been applied.

Subsequent cases have extended this broad interpretation of the word "person" in the Civil Rights Act and have held that a corporation is a person within that Act entitled to challenge the deprivation of rights under color of a state statute to which a money valuation could not be applied. Thus in *McCoy v. Providence Journal Co.*, 1 Cir., 190 F. 2d 760, it was held that a newspaper corporation, as well as individual persons employed by the corporation, were entitled to bring suit under 28 U. S. C. 1343(3) to secure the right to inspect public records which had been denied them by municipal authority; and in *Watchtower Bible and Tract Co. v. Los Angeles County*, 9 Cir., 181 F. 2d 739, it was held that the District Court had jurisdiction to entertain a complaint of a corporation engaged in the circulation of religious literature that it had been subjected to an unconstitutional tax. Both of these decisions relied upon the pronouncement of the Supreme Court in *Grosjean v. American Press Co.*, *supra*, and we are in accord with their conclusions. It is true that the Fourteenth Amendment as well as the Civil Rights statutes were enacted for the purpose of securing colored persons against unjustifiable discrimination, but in the development of the law the protection afforded by the Amendment has not been confined to natural persons, and there is no reasonable ground at this time to deny the protection afforded by the Civil Rights Act to corporations which are engaged through their agents in public speech and in the circulation of literature designed to protect the rights of natural persons in whose interest the enactments were originally passed. In these



days, when corporate organization is wellnigh necessary for the conduct of large enterprises, the propriety of including them within the protection of the Act would seem to be obvious; and since the word "person" in the Fourteenth Amendment has been broadly construed to include corporations in the protection of their property rights,<sup>7</sup> there is no good reason why the same liberality of interpretation should not be used when the corporation is formed not for purposes of profit but for the protection of the liberties of the individuals.

#### JURISDICTIONAL AMOUNT

Secondly, the defendants contest the right of the plaintiffs to obtain relief in this court under 28 U. S. C. §§ 1331 and 1332 which confer upon the district courts jurisdiction over civil actions arising under the Constitution and laws of the United States and civil actions between citizens of different states, where the matter in controversy exceeds the sum of \$3,000.00 exclusive of interest and costs. The contention is that the plaintiffs did not allege in their complaints or prove at the hearing sufficient facts to establish the jurisdictional amount. In substance the evidence shows that the membership of the Association in Virginia dropped from 19,436 for the first eight months of 1956, prior to the passage of the statutes in suit, to 13,595 in the first eight months of 1957, after the enactments. In the same period the income of the Association in Virginia showed a decline from \$43,612.75 to \$37,470.00, and its national income a decline from \$598,612.84 for the year 1956 to \$425,608.13 for

---

<sup>7</sup> See *Pennkamp v. Florida*, 328 U. S. 331 and *Burstyn, Inc. v. Wilson*, 343 U. S. 495, in each of which the Court upheld the right of a business corporation to freedom of speech and freedom of the press. It seems illogical and meaningless to deny the same rights to a nonprofit corporation organized to protect the freedoms of natural persons since the latter may always be properly joined as parties plaintiff in suits brought by the corporation on their behalf. See 66 Yale Law Journal 545, 548.



the first eight months of 1957. The Fund also experienced losses in these periods. Its income rose steadily until 1956, when it became \$351,283.32 although its operations in Texas were restrained in September by an order of court. Its income dropped in the subsequent period, as is shown by contrasting its income of \$180,000.00 for the first eight months of 1957 with its income of \$246,000.00 for the same period of 1956. In Virginia, its income dropped from \$1,859.20 for 1956 to \$424.00 during the first eight months of 1957.

When suit is brought for an injunction to restrain the enforcement of a regulatory statute alleged to be invalid because of its continuing harmful effect upon the plaintiff the jurisdiction of the court is to be tested by the value of the object to be gained. Failure to prove that a sufficient amount of damage has already been sustained will not defeat the remedy if the injury is recurrent or continuous, since the advantage to be gained by the complainant from removal of the burden imposed by the statute is the matter in controversy. *Glenwood Light & Water Co. v. Mutual L. H. & P. Co.*, 239 U. S. 121, 125, 126; *Gibbs v. Buck*, 307 U. S. 66, 74; *American R. Co. v. South Porto Rico Sugar Co.*, 1 Cir., 293 Fed. 670, 673; cf. *McNutt v. General Motors Accept. Corp.*, 298 U. S. 178, 181; *KVOS v. Associated Press*, 299 U. S. 269, 277. Hence the inquiry in the pending suits is not limited to the immediate effect upon the plaintiffs to be expected from the enforcement of the Virginia statutes but extends to the loss likely to flow from their enforcement throughout the years. Nor is the inquiry limited to the impact of the statutes upon the plaintiffs' business in Virginia, because the registration statutes, Chapters 31 and 32, are not confined to business done in Virginia, but require both plaintiffs to disclose the details of their business throughout the country including a list of all members, all contributions, and all expenditures; and Chapters 33, 35 and 36, relating to the practice of law, forbid the plaintiffs to pay the costs and expenses of class suits to

which most of the contributions received by the Fund in its recurrent national campaigns are devoted. Taking these facts into consideration, it is manifest that the existence of the required jurisdictional amount is established in each of the cases before the court.

Certainly it cannot be said that the claim of loss in excess of the jurisdictional amount was made by the plaintiffs in bad faith for the purpose of conferring jurisdiction, or that it has been shown to a legal certainty that less than the amount is involved in the pending suits; and hence the plaintiffs have met the test laid down in the following excerpt from *St. Paul Indemnity Co. v. Cab Co.*, 303 U. S. 283, 288-290:

"The intent of Congress drastically to restrict federal jurisdiction in controversies between citizens of different states has always been rigorously enforced by the courts. The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. The inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. Nor does the fact that the complaint discloses the existence of a valid defense to the claim. But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed. Events occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction."

## RESTRAINT OF CRIMINAL PROSECUTION

The defendants also invoke the familiar rule that ordinarily a court of equity will not restrain a criminal prosecution based on a state statute, even if the constitutionality of the statute is involved, since this question can be raised and settled in the criminal case with review by the higher courts as well as in a suit for injunction. *Douglas v. Jeannette*, 319 U. S. 157, 163, 164; and this is especially true where the only threatened action is a single prosecution of an alleged violation of state law. However, it is also well recognized that a criminal prosecution may be enjoined under exceptional circumstances where there is a clear showing of danger of immediate irreparable injury. *Spielman Motor Co. v. Dodge*, 259 U. S. 89, 95; *Beal v. Missouri Pacific R. Corp.*, 312 U. S. 45, 49. It is obvious that the present case falls in the latter category. The penalties prescribed by the statutes are heavy and they are applicable not only to the corporation but to every person responsible for the management of its affairs, and under Chapter 32 of the statutes each day's failure to register and file the required information constitutes a separate punishable offense. The deterrent effect of the statutes upon the acquisition of members, and upon the activities of the lawyers of the plaintiffs under the threat of disciplinary action has already been noted, and the danger of immediate and persistent efforts on the part of the state authorities to interfere with the activities of the plaintiffs has been made manifest by the repeated public statements. The facts of the cases abundantly justify the exercise of the equitable powers of the court. *Ex parte Young*, 209 U. S. 123, 147; *Truax v. Raich*, 239 U. S. 33; *Western Union Telegraph Co. v. Andrews*, 216 U. S. 165; *Sterling v. Constantin*, 287 U. S. 378.

PRIOR CONSTRUCTION OF STATUTES BY STATE  
SUPREME COURT

Finally, the defendants urge that we should not exercise the power to restrain the enforcement of the state statute but should withhold action until the statutes have been construed by the Supreme Court of Appeals of Virginia. This contention is based on the policy defined in decisions of the Supreme Court of the United States that the federal courts should avoid passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. Hence if the interpretation of a state statute is doubtful or a question of law remains undecided, the federal court should hold its proceedings in abeyance for a reasonable time pending construction of the statute by the state courts or until efforts to obtain such an adjudication have been exhausted. See *Spector Motor Co. v. McLaughlin*, 323 U. S. 101; *Governments & Civic Employees Organ. Com. v. Windsor*, 347 U. S. 901 and 353 U. S. 364; *Shipman v. Dupre*, 339 U. S. 321.

These rulings, however, do not mean that the federal courts lose jurisdiction in cases where the state courts have not passed upon the statute under attack or that the federal court is powerless to take any action until a decision by the state court has been rendered. Such a conclusion could not be reached in the pending case since the federal statutes expressly confer jurisdiction upon the federal courts where civil rights have been violated (42 U. S. C. §1983), or where federal questions are involved (28 U. S. C. §1331). Thus in *Doud v. Hodge*, 350 U. S. 485, where the constitutionality of a licensing and regulatory statute was involved and jurisdiction of the federal court was invoked under 28 U. S. C. §1331, the Court said (page 487):

“ \* \* \* This Court has never held that a district court is without jurisdiction to entertain a prayer for an injunction restraining the enforcement of a

state statute on grounds of alleged repugnancy to the Federal Constitution simply because the state courts had not yet rendered a clear or definitive decision as to the meaning or federal constitutionality of the statute.

"We hold that the District Court has jurisdiction of this cause. It was error to dismiss the complaint for lack of jurisdiction. The judgment of the District Court is vacated and the case is remanded to it. We do not decide what procedures the District Court should follow on remand."

See also *A. F. of L. v. Watson*, 327 U. S. 582, 599, where, in directing a district court to retain a suit involving the constitutionality of a state statute pending the determination of proceedings in the state courts, the Supreme Court said that the purpose of the suit in the federal court would not be defeated by this action, since the resources of equity are adequate to deal with the problem so as to avoid unnecessary friction with state policies while cases go forward in the state courts for an expeditious adjudication of state law questions.

The policy laid down by the Supreme Court does not require a stay of proceedings in the federal courts in cases of this sort if the state statutes at issue are free of doubt or ambiguity. See the opinion of Judge Parker in *Bryan v. Austin*, E. D. S. C., 148 F. Supp. 563, 567-568, where it was said:

"I recognize, of course, that, in the application of the rule of comity, a federal court should stay action pending action by the courts of a state, where it is called upon to enjoin the enforcement of a state statute which has not been interpreted by the state courts, and where the statute is susceptible of an interpretation which would avoid constitutional invalidity. As the federal courts are bound by the interpretation placed by the highest court of a state upon a statute of that state, they should not enjoin the enforcement of a statute as violative of the Con-

stitution in advance of such an interpretation, if it is reasonably possible for the statute to be given an interpretation which will render it constitutional. \* \* \* The role as to stay of proceedings pending interpretation of a state statute by the courts of the state can have no application to a case, such as we have here, where the meaning of the statute is perfectly clear and where no interpretation which could possibly be placed upon it by the Supreme Court of the state could render it constitutional."

We are not unmindful of the necessity of maintaining the delicate balance between state and federal courts under the concept of separate sovereigns. We agree that the constitutionality of state statutes requiring special competence in the interpretation of local law should not be determined by federal courts in advance of a reasonable opportunity afforded the parties to seek an adjudication by the state court. With these basic principles we find no fault.

It must be remembered, however, that Congress has not seen fit to restrict the jurisdiction of the district courts by imposing as a condition precedent to action by the federal courts, the judicial pronouncement by the state court in cases where the constitutionality of a state statute is presented and injunctive relief is requested. Concurrent jurisdiction still exists until modified in the wisdom of the legislative branch of our government.

Neither are we given any clear formula to follow under the decisions of the Supreme Court. The more recent decisions of the highest court suggest that statutory three-judge courts should be hesitant in exercising jurisdiction in the absence of state court action, or at least a reasonable opportunity to secure same. It is apparent to us that the Supreme Court has endeavored to grant cautious discretion to district courts in determining whether jurisdiction should be exercised and the matter considered on its merits, as contrasted with the acceptance of jurisdiction as such. Should this court exercise such jurisdiction under the facts



and circumstances of this case, bearing in mind the importance of the questions presented?

We are advised that Virginia is not alone in enacting legislation seriously impeding the activities of the plaintiff corporations through the passage of similar laws (43 Va. L. Rev. 1241). As heretofore noted, the problem for determination is essentially a federal question with no peculiarities of local law. Where the statute is free from ambiguity and there remains no reasonable interpretation which will render it constitutional, there are compelling reasons to bring about an expeditious and final ascertainment of the constitutionality of these statutes to the end that a multiplicity of similar actions may, if possible, be avoided.

#### CONSTITUTIONALITY OF CHAPTERS 31 AND 32

This discussion brings us at last to a consideration of the attack made on the constitutionality of the statutes in their bearing upon the activities of the plaintiffs. The two registration statutes, Chapters 31 and 32, are free from ambiguities which require a prior interpretation by the courts of the state and hence the obligation to pass on the question of constitutionality cannot be avoided.

Chapter 32 is the more sweeping of the two. Section 1 declares that harmonious relations between the races are essential to the welfare, health and safety of the people of Virginia and that it is the duty of the government to exercise all available means to prevent conditions which impede the peaceful co-existence of all the peoples in the state, and that therefore it is vital to the public interest that information be obtained with respect to persons or corporations whose activities may cause interracial tension or unrest.

Section 2\* of Chapter 32 requires the registration of any person who in concert with others engages as one of his principal activities (1) in promoting or opposing in any manner the passage of legislation by the General Assembly, in behalf of any race or color, or (2) in advocating racial integration or segregation; and the statute also requires the registration of any person, (3) whose activities cause or tend to cause racial conflict or violence, or (4) who is engaged in raising or expending funds for the employment of counsel or the payment of costs in connection with racial litigation.

§ 2. Every person, firm, partnership, corporation, or association, whether by or through its agents, servants, employees, officers, or voluntary workers or associates, who or which engages as one of its principal functions or activities in the promoting or opposing in any manner the passage of legislation by the General Assembly in behalf of any race or color, or who or which has as one of its principal functions or activities the advocating of racial integration or segregation or whose activities cause or tend to cause racial conflicts or violence, or who or which is engaged or engages in raising or expending funds for the employment of counsel or payment of costs in connection with litigation in behalf of any race or color, in this State, shall, within sixty days after the effective date of this act and annually within sixty days following the first of each year thereafter, cause his or its name to be registered with the clerk of the State Corporation Commission, as hereinafter provided; provided that in the case of any person, firm, partnership, corporation, association or organization, whose activities have not been of such nature as to require it to register under this act, such person, firm, partnership, corporation, association or organization, within sixty days following the date on which he or it engages in any activity making registration under this act applicable, shall cause his or its name to be registered with the clerk of the State Corporation Commission, as hereinafter provided; and provided, further, that nothing herein shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances, or to an individual freely speaking or publishing on his own behalf in the expression of his opinion and engaging in no other activity subject to the provisions hereof and not acting in concert with other persons.

The Association is admittedly engaged in activities (1), (2) and (4) and the defendants have offered evidence tending to show that these activities, if successful in bringing about integration, would cause racial conflicts and violence. The Fund is engaged in activities (2) and (4).

The sort of registration required by Chapter 32 has a definite bearing upon the validity of the enactment, since a statement of the business of the registrant in much detail is prescribed. The registrant, if a corporation, is required by § 3 of the statute to file a statement showing amongst other things the business address of all of its offices, the purpose for which it was formed, a copy of its charter, the names of its principal officers, and the names and addresses of all of the persons through whom it carries on its activities in the state, a list of its members and their addresses, a financial statement of assets and liabilities, an itemized list of its contributions and other income during the preceding year, and a list of its expenditures in detail.

Section 3 provides that, at the time of registration, information as to the preceding year shall be furnished under oath as to the source of any funds received or expended for the purposes set forth in § 2, including the name and address of each contributor and an itemized statement of expenditures, and also, if the registrant is a corporation, a list of its members in the state and their addresses and a financial statement showing the assets and liabilities, the source of its income, itemizing contributions and the sources thereof, and a list of expenditures in detail.

Section 5 makes it a misdemeanor for any person to engage in the activities described in § 2 without registration, punishable, in the case of a corporation, by a fine not exceeding \$10,000.00, each day's failure to register constituting a separate offense and punishable as such.

Section 6 provides that any person failing to comply with the Act may be enjoined from continuing its activities by any court of competent jurisdiction.

Section 9 excepts from the Act newspapers, periodicals, magazines or other like means admitted as second class matter in the United States Post Office, as well as radio, television, facsimile broadcast or wire service operations. Also excepted are persons or associations in a political election campaign or persons acting together because of activities connected with political campaigns.

Undoubtedly the burden of supplying these statements imposed upon persons who engage in activities (1) and (2) constitutes a restriction upon the right of free speech which, as we have seen, the Association is entitled to exercise. Hence the question arises whether the statute is within the police powers which, in the past, have been properly exercised in many fields." The defendants point out that the promoting or opposing passage of legislation covered by clause (1) may involve lobbying, which has long been recognized as a proper subject of regulation by the state and federal governments. Thus it was decided in *United States v. Hargiss*, 347 U. S. 612, by a divided court, that the registration provisions of the Federal Regulation of Lobbying Act did not violate Freedom of speech, provided the scope of the Act was limited to persons who had solicited or received contributions to influence or defeat the passage of legislation and who intended to accomplish this purpose

---

\* Among the authorities cited by the defendants were cases upholding regulation by registration applicable to vocational activities (*United States v. Harriss*, 347 U. S. 612 (1954) and *United States v. Slaughter*, 89 F. Supp. 205 (1950) on lobbyists; *Viereck v. United States*, 318 U. S. 236 (1943) and *United States v. Peace Information Center*, 97 F. Supp. 255 (1951) on foreign agents), subversion (*Communist Party v. Subversive Activities Control Board*, D. C. Cir., 223 F. 2d 531 (1954) and *Albertson v. Millard*, 106 F. Supp. 635 (1952)), and presidential election activities (*Burroughs v. United States*, 290 U. S. 534 (1934)). Cases involving Congressional control of the second class mailing privilege (*Lewis Publishing Co. v. Morgan*, 229 U. S. 288 (1913)), and state control over fraternities in state schools (*Waugh v. Mississippi University*, 237 U. S. 589 (1915) and *Webb v. State University of New York*, 125 F. Supp. 910. (1954) are also cited.

through direct communication with members of Congress. The plain implication of the decision, as appears clearly from the dissenting opinions, is that unless the Act were so limited it would be an unwarranted interference with the right of free speech. The lobbying statute of the State of Virginia, §§ 32-20 to 30-28, is likewise limited to those who employ a person to promote or oppose the passage of an act of the General Assembly and to a person accepting such employment. Such a person is required to register his name upon a legislative docket.

The terms of clause (1) of § 2 of the Act contain no such limitation. They apply to any person whose principal activities include "the promoting or opposing in any manner the passage of legislation by the General Assembly," excepting however, by § 9 of the Act, newspapers and similar publications, communications by radio and television, and persons engaged in a political election campaign. Hence the duty to register is imposed upon anyone who in concert with others merely speaks or writes on the subject, even if he has had no contact of any kind with the legislative body and has neither received nor spent any money to further his purpose. The discriminating and oppressive character of the provision is emphasized by the exemption of persons engaged in a political election campaign who are free to speak without registration, whereas, persons having no direct interest in elections as such and concerned only with securing equal rights for all persons are covered by the statute. Manifestly so broad a restriction cannot be held valid under the ruling of *United States v. Harriss*, *supra*.

The terms of clause (2) impinge directly upon the field of free speech for they apply to anyone, with the same exceptions, whose present activities include "the advocacy of racial integration or segregation," and so the same problem of the extent of regulatory power is presented. It must be borne in mind in considering the question that the



prohibition against laws abridging the freedom of speech, press and assembly contained in the First Amendment is not absolute, for, as was said in *Communications Assn. v. Douds*, 339 U. S. 382, 394, "it has long been established that these freedoms themselves are dependent upon the power of constitutional government to survive." Consequently in that case the non-Communist affidavits required by the Labor Management Relations Act were upheld even though the situation did not meet the clear and present danger tests laid down in *Schenck v. United States*, 249 U. S. 47; and in *Dennis v. United States*, 341 U. S. 494, the clear and present danger test was applied in upholding a conviction under the Smith Act, which made it a crime to organize a group which knowingly and wilfully advocates the violent overthrow of the Government of the United States.

The defendants insist that Chapter 32 was enacted for the commendable purpose of protecting the public welfare and safety and therefore should be upheld. They point to the declaration of the policy in the preamble of the statute to eliminate all conditions which impede the peaceful co-existence of all persons in the state and which, according to the testimony of law enforcement officers, is threatened by the effort to establish integration of the races in the public schools. Great dependence is placed upon the decision of the Supreme Court in *Bryant v. Zimmerman*, 278 U. S. 63 (1928), which is described as the leading case in this field most pertinent to the matter now before the court. The Supreme Court upheld a New York statute, aimed at the activities of the Ku Klux Klan, which required associations having an oath-bound membership to file lists of their members and officers with a State officer and made it a crime for members to attend meetings knowing that the registration requirement had not been complied with. It was held that the statute as applied to a member of the Ku Klux Klan would not violate the due process clause of the Fourteenth Amendment since the state, for its own protection, was entitled to the disclosure as a deterrent to violations



of the law; and also that there was no denial of equal protection in excepting labor unions, Masons and other fraternal bodies from the statutes, since there was a tendency on the part of the Ku Klux Klan to shroud its acts in secrecy and engage in conduct inimical to the public welfare.

We do not think that these decisions justify the restriction upon public discussion which Chapter 32 imposes upon the plaintiffs in this case. Obviously the purpose and effect of a regulatory act must be examined in each case in light of the existing situation. In the present instance the executive and legislative officers of the state have publicly and forcibly announced their determination to impede and, if possible, to prevent the integration of the races by all lawful means; and the statutes passed at the Extra Session were clearly designed to cripple the agencies that have had the greatest success in promoting the rights of colored persons to equality of treatment in the past, and are possessed of sufficient resources to make an effort at this time to secure the enforcement of the Supreme Court's decree. The statute is not aimed, as the act considered in *Bryant v. Zimmerman*, at curbing the activities of an association likely to engage in violations of the law, but at bodies who are endeavoring to abide by and enforce the law and have not themselves engaged in acts of violence or disturbance of the public peace.

The Act is not saved, in so far as the plaintiffs are concerned, by making it applicable to advocates of both sides of the dispute so that it requires a disclosure of the names of persons who may be led to acts of violence by reason of their hostility to integration. Such a provision does not lead to equality of treatment under the circumstances known by the Legislature to prevail. Registration of persons engaged in a popular cause imposes no hardship while, as the evidence in this case shows, registration of names of persons who resist the popular will would lead not only to expressions of ill will and hostility but to the loss of members by the plaintiff's Association.

Nor can the statute be sustained on the ground that breaches of peace may occur if integration in the public schools is enforced. The same contention was made in *Buchanan v. Warley*, 245 U. S. 60, where the court struck down an ordinance of the City of Louisville which forbade colored persons to occupy houses in blocks occupied for the most part by white persons. The court rejected the contention that the prohibition should be sustained on the ground that it served to diminish miscegenation and to promote the public peace by averting race hostility. See pages 73-74:

"This drastic measure is sought to be justified under the authority of the State in the exercise of the police power. It is said such legislation tends to promote the public peace by preventing racial conflicts; that it tends to maintain racial purity; that it prevents the deterioration of property owned and occupied by white people, which deterioration, it is contended, is sure to follow the occupancy of adjacent premises by persons of color.

"The authority of the State to pass laws in the exercise of the police power, having for their object the promotion of the public health, safety and welfare is very broad as has been affirmed in numerous and recent decisions of this court. Furthermore, the exercise of this power, embracing nearly all legislation of a local character, is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases."

This comment strikes home with peculiar force to the situation in Virginia where the attitude of the public authorities openly encourages opposition to the law of the land, which may easily find expression in disturbances of

the public peace. That which was said in *Grosjean v. American Press Co.*, 297 U. S. 233, 250, in respect to a state license tax imposed on the owners of newspapers is pertinent here:

“ \* \* \* the tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties. A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.”

For our purpose it is of special significance that in *Thomas v. Collins*, 323 U. S. 516, the Supreme Court held invalid a statute which required a union organizer merely to register and secure an organizer's card from a state officer before soliciting membership in a labor union in a public speech. It was said “that as a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with the exercise of free speech and free assembly.” The greater burden of the registration statutes in suit is manifest.

The terms of clause (3) of § 2 of the statute requiring registration of anyone whose activities cause or tend to cause racial conflicts or violence require little discussion. They are so vague and indefinite that the clause taken by itself does not satisfy the constitutional requirement that a criminal statute must give to a person of ordinary intelligence fair notice of the kind of conduct that constitutes the crime, *United States v. Harris*, 347 U. S. 612.

Clause (4) of Chapter 32 requires the registration of anyone who engages in raising or expending funds for the employment of counsel or the payment of costs in connection with litigation on behalf of any race or color. In connection with other provisions contained in Chapters 31,

33, 35 and 36 relating to litigation, it constitutes an important part, perhaps the most important part, of the plan devised by the state authorities to impede or to prevent the integration of the races in the schools of the state; and it subjects the participant to all of the details of registration above described.

In its broad coverage the statute applies to any individual who employs and pays a lawyer to act for him in a law suit involving a racial question. It also covers the plaintiff corporations in their effort to raise the money which in the past has been used to assist the colored people in the prosecution of suits to secure their constitutional rights both before and after the decision in *Brown v. Board of Education*.<sup>10</sup>

<sup>10</sup> The reported cases from both federal and state courts in this Circuit in which the Association or the Fund has taken an active part include: *Dawson v. Mayor and City Council of Baltimore City* and *Loussome v. Maxwell*, 220 F. 2d 386, aff'd mem. 350 U. S. 877, and *Department of Conservation and Development v. Tate*, 231 F. 2d 615, cert. denied 352 U. S. 838, dealing with segregation at Maryland public beaches and Virginia public parks; *Morgan v. Commonwealth*, 184 Va. 24, rev'd 328 U. S. 373, and *Flemming v. South Carolina Elec. & Gas Co.*, 224 F. 2d 752 and 239 F. 2d 277, concerning segregation in bus transportation; *Alston v. School Board of City of Norfolk*, 112 F. 2d 992, cert. denied 311 U. S. 693, dealing with discriminatory fixing of school teachers' salaries; *University of Maryland v. Murray*, 169 Md. 478 and *Kerr v. Enoch Pratt Free Library of Baltimore City*, 149 F. 2d 212, cert. denied 326 U. S. 721, concerning racial discrimination in professional school admissions; *Briggs v. Elliott*, 103 F. Supp. 920, rev'd 347 U. S. 483, remanded 349 U. S. 294, decree entered 132 F. Supp. 776; *Davis v. County School Board of Prince Edward County*, 103 F. Supp. 337, rev'd 347 U. S. 483, remanded 349 U. S. 294, decree entered sub nom; *Allen v. County School Board of Prince Edward County*, 149 F. Supp. 431, rev'd — F. 2d —; *Hood v. Board of Trustees of Sumter County*, 232 F. 2d 626; *School Board of the City of Charlottesville, Va. v. Allen and County School Board of Arlington County, Va. v. Thompson*, 240 F. 2d 59; *School Board of the City of Newport News, Va. v. Atkine and School Board of the City of Norfolk, Va. v. Beckett*, 246 F. 2d 325, cert. den. 355 U. S. —, and *Slade v. Board of Education of Harford County, Md.*, 152 F. Supp. 114, relating to segregation in the public schools.

The right of access to the courts is one of the great safeguards of the liberties of the people and its denial or undue restriction is a violation of the due process clauses of the Fifth and Fourteenth Amendments. That the restriction is onerous in this instance cannot be denied, for it is not confined to identification of the collectors of the funds but requires the disclosure of every contributor and of every member of the Association whose annual dues may have been used in part to pay the expenses of litigation.

Undoubtedly a state may protect its citizens from fraudulent solicitation of funds by requiring a collector to establish his identity and his authority to act; and the state may also regulate the time and manner of the solicitation in the interest of public safety and convenience. *Cantwell v. Connecticut*, 310 U. S. 296, 306; *Thomas v. Collins*, 323 U. S. 516, 540. Corrupt Practices Acts which seek to preserve the purity of elections by requiring the disclosure of the identity of those who strive to influence the choice of public officials are also a proper subject of legislative regulation. *Burroughs v. United States*, 290 U. S. 534. The statute before us, however, presents a very different case. It requires not merely the identity of the collector of the funds but the disclosure of the name of every contributor. In effect, as applied to this case, it requires every person who desires to become a member of the Association and to exercise with it the rights of free speech and free assembly to be registered, and the size of his contribution to be shown. This seems to us far more onerous than the requirement of a license to speak, which was struck down as unconstitutional in *Thomas v. Collins*, *supra*, especially as in this instance the disclosure is prescribed as part of a deliberate plan to impede the contributors in the assertion of their constitutional rights. In our opinion all four clauses of § 2 as applied to the plaintiffs in this case are unconstitutional.

In reaching this conclusion we may fairly consider not

only the rights of the plaintiff corporations but also the rights of the individuals for whom they speak, particularly the rights of the members of the Association and generally the members of the colored race in whose interests the plaintiffs carry on their work. The rights that the plaintiffs assert take their color and substance from the rights of their constituents; and it is now held that where there is need to protect fundamental constitutional rights the rule of practice is relaxed, which confines a party to the assertion of his own rights as distinguished from the rights of others. See *Barrows v. Jackson*, 346 U. S. 249, 257. This rule was applied in *Brewer v. Hoxie School District*, 8 Cir., 238 F. 2d 91, 104, where the school board in an Arkansas county brought suit to restrain certain organizations from obstructing the board in its efforts to secure the equal protection of the laws to all persons in the operation of the public schools in the district. The court said:

"The school board having the duty to afford the children the equal protection of the law has the correlative right, as has been pointed out, to protection in performance of its function. Its right is thus intimately identified with the right of the children themselves. The right does not arise solely from the interest of the parties concerned, but from the necessity of the government itself. \* \* \* Though, generally speaking, the right to equal protection is a personal right of individuals, this is 'only a rule of practice', \* \* \* which will not be followed where the identity of interest between the party asserting the right and the party in whose favor the right directly exists is sufficiently close."

For like reasons Chapter 31, which covers much the same ground as clause (4) of § 2 of Chapter 32, must also be held invalid. The introductory paragraph of § 2 is as follows:

"No person shall engage in the solicitation of funds from the public or any segment thereof when



such funds will be used in whole or in part to commence or to prosecute further any original proceedings, unless such person is a party or unless he has a pecuniary right or liability therein, nor shall any person expend funds from whatever source received to commence or to prosecute further any original proceedings, unless such person is a party or has a pecuniary right or liability therein until any person shall first:"—and then follows

Section 2(1) which requires the corporation to file annually a copy of its charter, a certified list of its officers and directors and members, a statement showing the source of each contribution or other item of revenue received during the preceding year and, if required by the State Corporation Commission, the name and address of each contributor; also a statement showing in detail the expenditures during the preceding year and any other information required by the State Corporation Commission.

Section 3 makes a violation of the Act a misdemeanor punishable by fine of not more than \$10,000 and the denial of admission to do business in the state. Violations of the Act may be enjoined in any court of record having civil jurisdiction. Every director and officer of the corporation and every person responsible for the management of its affairs is personally liable for the payment of the fine.

Further consideration of the restrictions imposed upon litigation on behalf of the colored race by the Virginia plan will be found in the following discussion in respect to Chapters 33, 35 and 36 also passed at the Extra Session of 1956.

#### CHAPTER 35

Chapters 33, 35 and 36 all relate to the improper practice of law. They are of prime importance since they furnish the basis for the contention of the prosecuting officers of the state that the plaintiff corporations are un-

lawfully engaged in the practice of law in Virginia and hence are not entitled to maintain these suits. Chapters 35 and 36, and the amendment of the sections of the Virginia Code relating to the illegal practice of law contained in Chapter 33, are new in the statute law of the state and are essential parts of the plan which deprives the colored people of the state of the assistance of the Association and the Fund in the assertion of their constitutional rights. To this end each of the statutes contains provisions which would bar the Association and the Fund from continuing to give the kind of assistance to colored plaintiffs in racial litigation which they have rendered for many years in the past.

We consider first Chapter 35 since it contains a carefully phrased definition of the crime of barratry and is free from ambiguity. Barratry is defined in 1 as stirring up litigation; a barrator is one who stirs up litigation; and stirring up litigation means instigating a person to institute a suit at law or equity. The terms "instigating," "justified" and "direct interest" are defined in 1(d), (e) and (f) as follows:

"(d) 'Instigating' means bringing it about that all or part of the expenses of the litigation are paid by the barrator or by a person or persons (other than the plaintiffs) acting in concert with the barrator, unless the instigation is justified.

"(e) 'Justified' means that the instigator is related by blood or marriage to the plaintiff whom he instigates, or that the instigator is entitled by law to share with the plaintiff in money or property that is the subject of the litigation or that the instigator has a direct interest in the subject matter of the litigation or occupies a position of trust in relation to the plaintiff; or that the instigator is acting on behalf of a duly constituted legal aid society approved by the Virginia State Bar which offers advice or assistance in all kinds of legal matters to all members of the public who come to

it for advice or assistance and are unable because of poverty to pay legal fees.

“(f) ‘Direct interest’ means a personal right or a pecuniary right or liability.”

The Legislature was careful to make exception of certain special situations and class suits in the following language:

“This act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not protect the client from payment of the cost and expense of litigation, nor shall this act apply to any matter involving annexation, zoning bond issues, or the holding or results of any election or referendum, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this act apply to suits involving the legality of assessment of collection of taxes or the rates thereof, nor shall this act apply to suits involving rates or charges or services by common carriers or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceedings to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional rights of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this State.”

The reference to the Virginia State Bar in §§ 1(c) and (f) is explained by the terms of Chapter 47, also passed at the Extra Session, which authorized the State Bar through its governing body to promulgate rules and regulations governing the function and operation of legal aid societies, and empowered the Attorney General to enforce such rules and regulations if authorized to do so by the State Bar. The record in this case does not show whether the State Bar has taken action under the statute, but for

present purposes this is not important since 1(c) of Chapter 35 limits the regulatory power of the State Bar to legal aid societies which offer advice or assistance in all kinds of legal matters to all members of the public who come to it advice and assistance and are unable because of poverty to pay legal fees. Organizations such as the Association and the Fund, which offer advice and assistance to a limited class of persons only, could not claim that they were "justified", even if they should have been approved by the State Bar.

Sections 2 and 3 make it a misdemeanor to engage in barratry punishable, if the barrator is a foreign corporation, by a fine of not more than \$10,000 and the revocation of its certificate of authority to do business in the state; and § 6 declares that an attorney at law who violates the Act is guilty of unprofessional conduct and that his license to practice law shall be revoked after hearing (under § 54-74 of the Code) for such period as the court may determine.

Obviously the plaintiff corporations will be amenable to these penalties if they continue to pay any part of the expenses of racial litigation in Virginia since they would not be "justified" within the terms of 1(c) of the Act; and attorneys at law connected with the plaintiff corporations who prosecute suits for colored persons; when authorized by them to do so, would also be liable to punishment if they assist, as they have done in the past, in bringing it about that any part of the expenses of litigation are paid by the Association or by the Fund.

The broad question is therefore raised as to whether it is within the power of the state to make it a crime for any corporation other than a general legal aid society to pay in whole or in part the expenses of litigation if it has only a general philanthropic or charitable interest in the litigation and does not have the kind of special interest described in the statute. Specifically, as applied to the facts of this case, the question is whether Virginia may make

it a crime for organizations interested in the preservation of civil rights to contribute money for the prosecution of lawsuits instituted to promote this cause.

The right of the state to require high standards of qualification for those who desire to practice law within its borders and to revoke or suspend the license to practice law of attorneys who have been guilty of unethical conduct is unquestioned. *Schware v. Board of Bar Examiners*, 353 U. S. 232; *Richmond Assn. of Credit Men v. Bar Association*, 167 Va. 327; *Campbell v. Third Dist. Committee*, 179 Va. 244. Solicitation of business by an attorney is regarded as unethical conduct and a proper subject of disciplinary action; and it has been held that the state may prohibit a layman engaged in the business of collecting accounts from soliciting employment for this purpose, since a regulation which aims to bring the conduct of the business in harmony with the ethical practices of the legal profession is reasonable. *McCloskey v. Tobin*, 252 U. S. 107. Independent of statute, it is contrary to public policy for a corporation to practice law, directly or indirectly, since the relationship of attorney and client is one involving the highest trust and confidence and cannot exist between an attorney employed by the corporation and a client of the corporation; and so in *Richmond Assn. of Credit Men v. Bar Association*, *supra*, it was held that a credit association was engaged in the unlawful practice of law when, acting with the authority of creditors, it selected and paid the lawyers who were employed to make the collection by suit or otherwise.

The standards of the legal profession in these respects are carefully set forth in Canon 28 of the Canons of Professional Ethics of the American Bar Association, which condemns the stirring up of strife and litigation and declares it unprofessional for a lawyer to volunteer advice to bring a law suit except in cases where ties of blood, relationship or trust make it his duty to do so. It is de-

clared to be disreputable to engage in such acts as hunting up defects in titles or seeking claims for personal injuries, or employing agents or runners for like purposes.

It is manifest, however, that the activities of the plaintiff corporations are not undertaken for profit or for the promotion of ordinary business purposes but, rather, for the securing of the rights of citizens without any possibility of financial gain. Its activities are not covered by Canon 28 but rather by Canon 35 entitled *Intermediaries*, which relates *inter alia* to the aid rendered to indigent litigants by charitable societies and provides in part as follows:

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or, in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries."

Canon 35 was cited with approval in *Richmond Assn. of Credit Men v. Bar Association*, 167 Va. at 334. Indeed the exclusion of lawyers when acting for benevolent purposes and charitable societies, as distinguished from business corporations, from the restrictions imposed by the canons of Professional Ethics has long been recognized in the approval given by the courts to services voluntarily offered by members of the bar to persons in need, even when the attorneys have been selected by corporations organized to serve a cause in a controversial field. See the historic incidents listed in the opinion *In re Ades*, D. C.-Md. 6 F. Supp. 467, 475; and see also *Gunnells v. Atlanta Bar Assn.*, 191 Ga. 366, 12 S. E. 2d 602, where the Supreme Court of Georgia refused an injunction to restrain the bar associa-



tion and its members from offering their services to borrowers of money at usurious rates in defense of suits that might be brought against them. The Court said at page 382:

"It is not wrongful to induce a repudiation of an illegal contract. . . . Nor was the defendant's offer to represent free of charge persons caught in the toils of the usurious money-lender in defending against such illegal exactions, and to represent them in bringing actions to recover amounts illegally paid under loan contract, a violation of the Code. . . . in reference to the solicitation of legal employment and the offense of barratry. We do not believe that it is true, as contended by counsel for the plaintiff, that the enforcement of the usury laws of this State is a matter solely for the law-enforcement officers and of those from whom usury is being exacted, and that it is illegal and unethical for lawyers to publicly criticize an alleged widespread violation of such laws and to seek to eradicate the evil by the means here shown. Much could be said as to why their position in the community makes it entirely appropriate that they undertake such a movement and assume such responsibilities in reference to the general welfare of the public. We see no reason why the judgment of the learned judge should be disturbed."

Chapter 35, in failing to recognize this settled rule, violates well-established constitutional principles in its bearing upon the plaintiff corporations. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment", *Schwartz v. Board of Bar Examiners*, 353 U. S. 232, 238. In the first place, the statute obviously violates the equal protection clause, for it forbids the plaintiffs to defray the expenses of racial litigation, while at the same time it legalizes the activities of legal aid societies that serve all needy person in all sorts of litigation. No

argument has been offered to the court to sustain this discrimination. Moreover, Chapter 35 violates the due process clause, for it is designed to put the plaintiff corporations out of business by forbidding them to encourage and assist colored persons to assert rights established by the decisions of the Supreme Court of the United States. The activities of the plaintiffs as they appear in these cases do not amount to a solicitation of business or a stirring up of litigation of the sort condemned by the ethical standards of the legal profession. They comprise in substance public instruction of the colored people as to the extent of their rights, recommendation that appeals be made to the courts for relief, offer of assistance in prosecuting the cases when assistance is asked, and the payment of legal expenses for people unable to defend themselves; and the attorneys who have done the work have done so only when authorized by the plaintiffs. The evidence is uncontradicted that the initial steps which have led to the institution and prosecution of racial suits in Virginia with the assistance of the Association and the Fund have not been taken until the prospective plaintiffs made application to one or the other of the corporations for help. In our opinion the right of the plaintiff corporations to render this assistance cannot be denied.

No doubt, the State of Virginia has the right reasonably to regulate the practice of law, but, where that regulation prohibits otherwise lawful activities without showing any rational connection between the prohibition and some permissible end of legislative accomplishment, the regulation fails to satisfy the requirements of due process of law. Here, under the guise of regulating unauthorized law practice, the General Assembly has forbidden plaintiffs to continue their legal operations.

Chapters 33 and 36 are also phrased so as to interfere with the activities of the plaintiffs. This is done in Chap-

ter 33 by amending §§ 54-74, 54-78 and 54-79 of Article 7 of the Code relating to malpractice and to the improper solicitation of legal business for an attorney by a "runner" or "capper", so as to include within the definition of these terms a person who employs an attorney in connection with any judicial proceeding in which the person has no pecuniary right or liability. The language of the statute, especially portions of § 54-74(6) and § 54-78(1),<sup>11</sup> is obscure

<sup>11</sup> "§ 54-74.

(6) 'Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct', as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this chapter. . . ."

"§ 54-78. As used in this article:

(1) A 'runner' or 'capper' is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law \* or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated.

"The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit or procure business for such person, partnership, corporation, organization or association or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.

"(2) An 'agent' is one who represents another in dealing with a third person or persons."

and difficult to understand, but the general purpose seems to be to hit any organization which participates in a law suit in which it has no financial interest and also to fasten the charge of mal-practice upon any lawyer who accepts employment from such an organization. If the statute should be so interpreted as to forbid a continuance of the activities of the plaintiff corporations in respect to litigation as described in this opinion, it would in large measure destroy their effectiveness.

Chapter 36, § 1(a), is aimed at anyone not having a direct interest in the proceeding, who gives, receives or solicits anything of value as an inducement to any person to commence a proceeding in any court or before any administrative agency of the state or in any United States court in Virginia against the Commonwealth of Virginia, or any department or subdivision thereof, or any person acting as an officer or employee of any of the foregoing. Section 1(b) makes it unlawful for anyone who has no direct interest in the subject matter of the proceeding to advise or otherwise instigate the bringing of a suit or action against any of the defendants above described. Here again the language is ambiguous, and doubts have arisen as to whether the giving of advice to persons as to their constitutional rights amounts to the "instigation"<sup>12</sup> of a suit or whether the giving of money to needy litigants amounts to an "inducement" to bring a suit. If so construed as to restrict the activities of the plaintiff corporations disclosed by the evidence in these cases, their effectiveness would be in large measure destroyed. Since Chapters 33 and 36 are vague and ambiguous we do not pass upon their constitutionality.

We have come perforce to these final conclusions since the contrary position cannot be justly entertained. If the

---

<sup>12</sup> In Chapter 35 the verb "to instigate" is given a very precise definition, but in Chapter 36 it is given no definition at all.

Acts of the General Assembly of Virginia should be held to outlaw the activities of the plaintiff corporations, the Commonwealth would be free to use all of its resources in its search for lawful methods to postpone and, if possible, defeat the established constitutional rights of a body of its citizens, while the colored people of the state would be deprived of the resources needed to resist the attack in the state and federal courts. The duty of this court to avoid such a situation, if possible, is manifest.

Accordingly, an injunction will be granted restraining the defendants from proceeding against the plaintiffs under Chapters 31, 32 and 35 because of the activities of the plaintiffs in the past on behalf of the colored people in Virginia as disclosed in the evidence in these cases or because of the continuance of like activities in the future.

As to Chapters 33 and 36, the complaints will be retained for a reasonable time pending the determination of such proceedings in the state courts as the plaintiffs may see fit to bring to secure an interpretation of these statutes; and in the meantime, the court will assume that the defendants will continue to co-operate, as they have in the past, in withholding action under the authority of the statutes until a final decision is reached; and the plaintiffs may petition the court for further action if at any time they deem it their interest to do so.

HOPFMAN, *District Judge*, concurs.

HUTCHESON, District Judge, concurring in part and dissenting:

This Court has before it for determination certain questions which may be resolved into one, simply stated; that is, whether this Court is to be bound by well-known principles of judicial construction, firmly embedded in the fabric of the law and announced time after time by the Supreme Court of the United States, or is this Court to disregard these principles and follow a new course based upon inferences tortuously drawn from expressions which may be found in some of the opinions? A mere statement of the question demonstrates its importance. That importance is accentuated by the fact that the case involves the traditionally delicate balance between the courts of the state and the Federal Courts. The importance of the principle can hardly be over emphasized.

Repeatedly the Courts have discussed at length the "deeply rooted" doctrine which has become a "time-honored canon of constitutional adjudication" that Federal Courts do not interfere with state legislation when the asserted federal right may be preserved without such interference. We have been told by the Supreme Court in clear language that where it is necessary to construe a state statute in order to determine whether a federal right is involved the construction must be that of the court of the state by which the statute is to be enforced. The rule and the reason for the rule have been made plain by the same authority.

Before discussing the areas in which I find myself in disagreement with my learned associates, I am glad to concur in their decision that the exercise of jurisdiction be withheld as to *Chapters 33 and 36 of the Acts of the General Assembly* until those statutes have been construed by the courts of the state, although I do not agree with the reasoning upon which that decision is based.



At this point my concurrence ends. Since my views concerning the issues are so much at variance with those expressed in the majority opinion I am constrained to file this separate opinion. In addition to disagreement with the legal conclusions of the majority of the Court, I find myself in disagreement with their statement of the facts. In my opinion the evidence does not support many factual conclusions recited in the elaborate statement found in the opinion. Since the facts are of minor importance at this point, I shall not undertake to set out the numerous errors and omissions which appear. It would serve no useful purpose and would unduly prolong this opinion. However, for the record I register my disagreement.

In passing, attention is called to what I regard as an immaterial and unnecessary discussion of extraneous matter relating to the action of the Supreme Court in the School Segregation Cases, speeches of the Governor of Virginia, expressions contained in a report of a Legislative Commission appointed by the Governor, resolutions of the General Assembly, the Constitutional Referendum, and the decisions involving what is known as the Pupil Placement Act. The lengthy recital pertaining to the legislative history can have only one effect, which is to becloud the issue before the Court and to surround the case with an atmosphere foreign to the judicial calm which should prevail when a legal principle is dealt with. I question the relevancy of much of this material at any time, but certainly it can have no proper place here where we are concerned with orderly procedure in a court of law and with a principle of first importance. The issue should not be obscured by an emotional approach.

Such facts as need be stated here are simple and may be briefly recited. Plaintiffs are corporations chartered under the laws of the State of New York and licensed to do business in Virginia. The defendants are the Attorney General of Virginia and certain other officials, charged with

enforcing the laws of the Commonwealth. The principal objectives of the plaintiffs, so far as here pertinent, are the dissemination of information concerning the legal rights of members of the colored race, the organization of groups to seek the enforcement of such rights, the solicitation of funds to be used, and the use of such funds, in promoting the objectives stated and in financing litigation involving cases in which it is alleged that members of that race are being discriminated against on account of racial origin.

In Extra Session in 1956 the General Assembly in Virginia passed certain statutes which are the subject matter of the present controversy. Those statutes fall into two categories.

The first, consisting of *Chapters 31 and 32*, are designed to regulate the conduct of persons or corporations who solicit funds to be used and to expend funds to finance or maintain litigation of others. Emphasis is placed upon activities pertaining to conflicting racial interests. The statutes would be applicable to activities such as those engaged in by the plaintiffs and those of other organizations, similarly operating in Virginia.

The second set of statutes, being *Chapters 33, 35 and 36*, are designed to regulate the conduct of those licensed to or engaged in the practice of law in Virginia.

The plaintiffs contend that the statutes are unconstitutional in that if enforced they would be deprived of rights guaranteed under the Fourteenth Amendment to the Constitution of the United States. The relief sought is an injunction and a declaratory judgment. While there are actually two cases brought by separate plaintiffs the issues are such that they are being dealt with as one.

Motions to dismiss for lack of jurisdiction have been filed and there has been a full hearing of the case. The various questions presented have been argued, and may be concisely stated as dealing with the following:

1. Jurisdiction of the Court;
2. Motives of the General Assembly in enacting the statutes;
3. Whether in the exercise of its discretion the Court should accept jurisdiction if it exists;
4. The construction of the statutes.

#### JURISDICTION OF THE COURT

The jurisdiction of the Court is attacked upon two grounds. The first relates to the jurisdictional amount of \$3,000.00 under the Diversity Statute, and the second relates to the civil rights of a corporation under the *Fourteenth Amendment*.

(a) While it may be debatable, it is my view that the jurisdictional amount has been shown by the evidence presented sufficiently to justify the Court in hearing the cases.

(b) The defendants rely upon *Hague v. C. I. O.*, 307 U. S. 496, in support of their contention that the corporations are not entitled to the privileges and immunities which the *Fourteenth Amendment* secured for citizens of the United States. For present purposes a recital of the facts of that case may be limited to the statement that the plaintiffs consisted of certain individuals and a corporation, all of whom contended that the enforcement of a city ordinance would deprive them of the right of free speech. The case is directly in point. There were a number of opinions filed. In the main syllabus the following language is used:

"The ordinances and their enforcement violate the rights under the Constitution of the individual plaintiffs, citizens of the United States; but a complaining corporation can not claim such rights. P. 514."

In the syllabus covering the opinion of Mr. Justice Roberts substantially the same analysis is given. (2061). See also *Section 1* in syllabus of the opinion of Mr. Justice Stone.

In the opinion of Mr. Justice Roberts, in which Mr. Justice Black concurred, the following appears on *page* 514:

"Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secured for 'citizens of the United States'. (Citing cases.) Only the individual respondents may, therefore, maintain this suit."

In the opinion of Mr. Justice Stone, with Mr. Justice Reed concurring, on *page* 527 the following language appears:

"Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by Section 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons." (Citing cases.)

In the concurring opinion of Mr. Chief Justice Hughes on *page* 532, the following appears:

"With respect to the point as to jurisdiction I agree with what is said in the opinion of Mr. Justice Roberts as to the right to discuss the National Labor Relations Act being a privilege of a citizen of the United States, but I am not satisfied that the record adequately supports the resting of jurisdiction upon that ground. As to that matter, I concur in the opinion of Mr. Justice Stone." See dissenting opinion of Mr. Justice Butler.

Mr. Justice McReynolds dissented, being of opinion the case should be remanded to the District Court with instructions to dismiss the bill, he having concluded that the District Court should have refused to interfere with the rights of the municipality to control its parks and streets. He used the following language:

"Wise management of such intimate local affairs, generally at least, is beyond the competency of federal courts, and essays in that direction should be avoided.

"There was ample opportunity for respondents to assert their claims through an orderly proceeding in courts of the state empowered authoritatively to interpret her laws with final review here in respect of federal questions."

See also interpretation of Mr. Justice Frankfurter in *Bridges v. State of California*, 314 U. S. 252, 280, where in a dissenting opinion he discusses the rights of the states in respect of their internal affairs. He cites *Hague* as drawing a distinction between the rights of natural and artificial persons.

The plaintiffs here, both being corporations, contend they are entitled to such protection and point to the earlier case of *Grosjean v. American Press Company*, 297 U. S. 233,<sup>1</sup> and other cases involving corporations engaged in the publication of newspapers, magazines, etc. A careful examination of *Grosjean* discloses that it does not support such contention. On page 244 the Court, after observing that freedom of speech and of the press are rights of the same fundamental character, (the Court did not say the rights are the same as would appear to be the interpretation by the majority of this Court) safeguarded by the due process of law clause, used the following language:

"Appellant contends that the Fourteenth Amendment does not apply to corporations; but this is only

<sup>1</sup> Cited in *Hague v. C. I. O.* at page 519.

partly true. A corporation, we have held, is not a 'citizen' within the meaning of the privileges and immunities clause. *Paul v. Virginia*, 8 Wall. 168. But a corporation is a 'person' within the meaning of the equal protection and due process of law clauses, which are the clauses involved here. *Corbington & Lexington Turnpike Co. v. Sanford*, 164 U. S. 578, 592; *Smyth v. Ames*, 169 U. S. 466, 522."

The opinion concludes with the following language:

"Having reached the conclusion that the act imposing the tax in question is unconstitutional under the due process of law clause because it abridges the freedom of the press, we deem it unnecessary to consider the further ground assigned that it also constitutes a denial of the equal protection of the laws."

This language should set at rest the contention that that case is controlling as respects the position of the plaintiffs. It could not be clearer that it does not support that contention but it is consistent with *Hague*.

*Grosjean* and similar cases relate primarily to and are founded upon the right of freedom of the press. It follows that *Hague* is controlling and corporations are not entitled to the rights of a natural person. From the nature of the rights it is obvious that it was never intended that a corporation should enjoy such rights as a natural person. It is equally obvious that freedom of the press should not be limited to natural persons. This appears determinative of the rights of the plaintiffs. I realize that it is a question which properly may be determined by the state court and a determination by this Court at this time might be premature. My view is that it should finally dispose of the case.



## MOTIVES OF THE GENERAL ASSEMBLY IN ENACTING THE STATUTES

The emphasis placed by the majority upon collateral occurrences would indicate reliance upon such occurrences in reaching the conclusions there stated as a justification for disregarding accepted rules of both procedure and construction. The majority has undertaken to assess the motives of the legislative body as a collective whole as distinguished from the familiar rule relating to legislative intention or purpose in construing statutes of uncertain meaning. They say, in effect, that by the enactment of certain other statutes relating to public schools coupled with the statutes now under attack, the Legislature has attempted to provide a legal means of avoiding compliance with the order of the Supreme Court of the United States in the School Segregation Cases. From this premise they infer that the statutes here involved are tainted with illegality by way of association—a somewhat novel concept which seems to have acquired some judicial recognition in recent times. They appear to proceed upon the theory that the Supreme Court has ordered the public schools mixed racially. As has been repeatedly pointed out, the Supreme Court did not make such an order. If lawful means to comply with the order issued and at the same time retain unmixed schools can be found, there is no unlawful thwarting of the Supreme Court mandate and consequently no invalidity shown. However, we are not now concerned with this question.

The issue here goes deeper. That issue is whether the Judicial branch of the Government can sit in judgment upon the collective personal motives or influences activating those charged with the responsibility of conducting the affairs of one of the other co-ordinate branches. If this can be done the result may be far-reaching indeed.

While it is proper for the Court in construing a statute to inquire into the intention or purpose of its enactment when its language is ambiguous or uncertain, inquiry into

the motives prompting the members of the legislative body in casting their votes respecting such enactment presents an entirely different situation. *Fletcher v. Peck*, 10 U. S. 87, decided in 1810, contains a discussion of the subject which is applicable today. In his opinion beginning on page 125, Chief Justice Marshall pointed to some of the perplexities which would be involved. Mr. Justice Johnson elaborated upon this in his opinion beginning on page 143. In that case actual fraud coupled with financial gain on the part of legislators was shown but the statutes were recognized as valid. It is inconceivable that the judicial branch of the Government should undertake to exercise the power to inquire into the motives of the legislative branch as a collective body. If the individual members are guilty of fraud or other unlawful conduct, they are subject to legal sanctions as individuals and they are answerable to their constituents at the polls.

Following the lengthy discussion of what is described as the "setting" in which the Acts were passed, the majority ignores *Fletcher v. Peck*, gives a nod of recognition to *Tenny v. Brandhove*, 341 U. S. 367, with an acknowledgment that a court may not inquire into the legislative motive and proceeds with an assertion that the legislative purpose may be the subject of inquiry, giving as authority *Baskin v. Brown*, 174 Fed. (2d) 391, 392, 393, and *Davis v. Schnell*, 81 Fed. Supp. 872, 878-880, affirmed by per curiam decision in 336 U. S. 933, where it was noted that Mr. Justice Reed was of opinion that since a constitutional provision of a state was involved, probable jurisdiction should be noted and the case argued. From the language used by the majority, it would appear that purpose or intention have been confused with motive. The first case relied upon, *Davis v. Schnell*, was from a three-judge District Court in Alabama. It involved the right to vote. The Court recited in detail the legislative history of the act. In discussing its views in *Baskin v. Brown*, the Court cited *Davis v. Schnell* and quoted from that opinion concerning the intention and pur-

pose of the legislation. As I read both opinions, they use the term "purpose" as similar or synonymous with "intention". Neither discusses the motives influencing the Legislature and in neither is *Fletcher v. Peck* nor *Tenny v. Brandhove* mentioned. While they tend to give color to the suggestion that motive may be considered, I am unable to accept them as authority for such theory. And see *Lassiter v. Taylor*, 152 Fed. Supp. 295 (E. D. N. C.) (1957), from which may be inferred a position contrary to the *Dooris* and *Baskin* cases. *Lane v. Wilson*, 307 U. S. 268, is the third case upon which the majority bases its conclusion upon this point. It must be borne in mind that *Lane v. Wilson* was an action for damages brought under a statute conferring original jurisdiction in such cases upon the Federal Court.

In none of these cases is the question so fully presented and discussed as in *Fletcher* and *Tenny*, in both of which the underlying principle is recognized.

If it be conceded that the Courts may inquire into the personal motives of legislators a maze of avenues of possible inquiry is seen. Must the motive be corrupt; what proof will show corruption—a state of mind or personal gain? Would undue influence vitiate the act? Must the improper motive exist on the part of a majority; if not on the part of a majority, on what number? If bad motive on the part of a majority of the legislature is required, is it necessary that it be a majority of the entire body or of only those who supported the legislation? What type of proof would be sufficient to show improper motive? Is the burden of proof similar to that required in ordinary cases involving fraud? Must actual fraud be proven or is constructive fraud sufficient? In recognition of the principle that the acts of a sovereign are pure, upon what historic concept can one of the three great branches of a republican form of government denounce as impure the act of a co-ordinate branch? If this can be done, will it be necessary that the third co-ordinate branch concur in the result? The questions posed show the absurdity of the contention urged

by the plaintiffs and apparently approved by the majority of this Court, that the motives of the legislature are a proper subject of inquiry.

Before leaving this subject, I call attention to what seems an inconsistency. Having assumed the power to interpret the statutes and basing that interpretation, at least in part, upon the motives of the Legislature, the majority denounces only some of the statutes and leaves the others for construction by the state Court. There naturally arises the question of why such motives should taint only a limited number of the statutes and not others constituting this alleged unlawful scheme.

#### WHETHER IN THE EXERCISE OF ITS DISCRETION THE COURT SHOULD ACCEPT JURISDICTION IF IT EXISTS

Time after time the Courts have given expression to the propriety of recognizing the delicate balance between the Courts of the states and the Federal Courts. This is as important now as it has been in the past.

This principle of judicial interpretation is based upon the fundamental concept of separate sovereigns embodied in the Constitution of the United States. The Courts have announced in clear and specific language the rule and the reasons for the rule.

Cases almost without number decided by the Supreme Court have recognized and upheld the doctrine now involved which may be illustrated by *Spector Motor Company v. McLaughlin*, 323 U. S. 101, decided in 1944. In that case suit was brought in a Federal District Court to enjoin the enforcement of a tax imposed by the State of Connecticut and a declaratory judgment. The Court proceeded to pass upon the constitutional questions presented. The statute had not been construed by the Connecticut Court. The following language was used by the Supreme Court:

"It was conceded below that if the Connecticut tax was construed to cover petitioner it would run

about the Commerce Clause, were this Court to adhere to what Judge Learned Hand called 'an unbroken line of decisions'. On the basis of what it deemed foreshadowing 'trends', the majority ventured the prophecy that this Court would change its course, and accordingly sustain the tax. In view of the far-reaching import of such a disposition by the Circuit Court of Appeals we brought the case here."

After referring to questions touching the taxing powers of the states and their relation to the Commerce Clause, the Court said:

"We would not be called upon to decide any of these questions of constitutionality, with their varying degrees of difficulty, if, as the District Court held, the statute does not at all apply to one, like petitioner, not authorized to do intrastate business. Nor do they emerge until all other local Connecticut issues are decided against the petitioner. But even if the statute hits aspects of an exclusively interstate business, it is for Connecticut to decide from what aspect of interstate business she seeks an exaction. It is for her to say what is the subject matter which she has sought to tax and what is the calculus of the tax she seeks. Every one of these questions must be answered before we reach the constitutional issues which divided the court below.

"Answers to all these questions must precede consideration of the Commerce Clause. To none have we an authoritative answer. Nor can we give one. Only the Supreme Court of Errors of Connecticut can give such an answer. But this tax has not yet been considered or construed by the Connecticut courts. We have no authoritative pronouncements to guide us as to its nature and application. That the answers are not obvious is evidenced by the different conclusions as to the scope of the statute reached by the two lower courts. The Connecticut Supreme Court may disagree with the District Court and agree with the Circuit Court of Appeals as to the applicability of the statute. But this is an assumption and at best 'a forecast rather than a determination.' *Railroad Commission v. Pullman Co.*,

312 U. S. 496, 499. Equally are we without power to pass definitively on the other claims urged under Articles I and II of the Connecticut Constitution. If any should prevail, our constitutional issues would either fall or, in any event, may be formulated in an authoritative way very different from any speculative construction of how the Connecticut courts would review this law and its application. *Watson v. Buck*, 313 U. S. 387, 401-402.

"If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable. And so, as questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law. *Railroad Commission v. Pullman Co.*, supra; *Chicago v. Fieldcrest Dairies*, 316 U. S. 168; *In re Central R. Co. of New Jersey*, 136 F. 2d 633. See also *Burford v. Sun Oil Co.*, 319 U. S. 315; *Meredith v. Winter Haven*, 320 U. S. 228, 235; *Green v. Phillips Petroleum Co.*, 149 F. 2d 466; *Findley v. Odland*, 127 F. 2d 948; *United States v. 150.29 Acres of Land*, 135 F. 2d 878. Avoidance of such guesswork, by holding the litigation in the federal courts until definite determinations on local law are made by the state courts, merely heeds this time-honored canon of constitutional adjudication.

"We think this procedure should be followed in this case."

As will be later shown, the foregoing rule has been consistently applied with a negligible number of exceptions.

On this issue of vital importance the majority opinion seems based upon a quotation found in a dissenting opinion in *Bryan v. Austin* (E. D. S. C.), 148 Fed. Supp. 563, 567, 568. The entire text of that portion of the dissenting opin-



ion so relied upon may be found in the footnote 2. The underscored portion is that part omitted from the quotation incorporated into the majority opinion.<sup>2</sup>

With due deference to the learned author of that opinion, my examination of the cases cited does not lead me to the same conclusion as that stated, nor have I found any other pronouncements of the Supreme Court which lead me to that conclusion. After an earlier reference to the celebrated declaration of Chief Justice Marshall in *Cohens*

<sup>2</sup> "I recognize, of course, that, in the application of the rule of comity, a federal court should stay action pending action by the courts of a state, where it is called upon to enjoin the enforcement of a state statute which has not been interpreted by the state courts, and where the statute is susceptible of an interpretation which would avoid constitutional invalidity. As the federal courts are bound by the interpretation placed by the highest court of a state upon a statute of that state, they should not enjoin the enforcement of a statute as violative of the Constitution in advance of such an interpretation, if it is reasonably possible for the statute to be given an interpretation which will render it constitutional. *This is all that is held by the Supreme Court in such cases as Shipman v. Dupre*, 339 U. S. 321, 70 S. Ct. 640, 94 L. Ed. 877, and *A. F. of L. v. Watson*, 327 U. S. 582, 596, 598, 66 S. Ct. 761, 90 L. Ed. 873. *The Supreme Court in Alabama Public Service Commission v. Southern Railway Co.*, 341 U. S. 341, 344, 71 S. Ct. 762, 95 L. Ed. 1002, recognizes that proceedings should be stayed only where there is involved 'construction of a state statute so ill-defined that a federal court should hold the case pending a definitive construction of that statute in the state courts'. In the case of *Toomer v. Witsell*, 334 U. S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460, in which the District Court had upheld the constitutionality of a state statute, the Supreme Court reversed the decision without staying proceedings for action by the state courts. And in *Doud v. Hodge*, 350 U. S. 485, 76 S. Ct. 491, 100 L. Ed. 577, the Supreme Court reversed the dismissal of a case by a District Court, 127 F. Supp. 853, where the dismissal was granted on the ground that a statute alleged to be unconstitutional had not been passed upon by the courts of the state. The rule as to stay of proceedings pending interpretation of a state statute by the courts of the state can have no application to a case, such as we have here, where the meaning of the statute is perfectly clear and where no interpretation which could possibly be placed upon it by the Supreme Court of the state could render it constitutional."

v. *Virginia*, 6 Wheat. 264, concerning the usurpation of jurisdiction, he concedes that in *Shipman v. DuPre*, 339 U. S. 321 and *A. F. of L. v. Watson*, 327 U. S. 582, 600, the Supreme Court held that the Federal Courts are bound by interpretation of the statute by the highest court of the state and should not enjoin the enforcement of such statute as violative of the Constitution in advance of such interpretation. The following language is then used:

“ \* \* \* if it is reasonably possible for the statute to be given an interpretation which will render it constitutional. This is all that is held by the Supreme Court in such cases as \* \* \* ” *Shipman* and *A. F. of L.*

The learned author then asserts that “the Supreme Court in *Alabama Public Service Commission v. Southern Railway Co.*, 341 U. S. 344, \* \* \* recognizes that proceedings should be stayed *only* where there is involved ‘construction of a state statute so ill-defined that a federal court should hold the case pending a definite construction of that statute in the state courts.’ ” (Emphasis supplied.)

I find nothing in *Shipman* referring to the susceptibility of the statute to different interpretations.

*A. F. of L. v. Watson*, contains the following language on page 599:

“The doubts concerning the meaning of the Florida law indicate that such a procedure is peculiarly appropriate here.”

The procedure referred to was an interpretation of the Florida constitutional amendment by the state court before the Federal Court exercised jurisdiction. The case was reversed and remanded, with directions that the bill be retained pending determination of the state court proceedings.

I do not read *Alabama* as supporting the assertion that proceedings should be stayed *only* where an ill-defined statute is involved. The only language I find bearing re-

semblance to such a doctrine appears on page 344, as follows:

"Federal jurisdiction in this case is grounded upon diversity of citizenship as well as the allegation of a federal question. Exercise of that jurisdiction does not involve construction of a state statute so ill-defined that a federal court should hold the case pending a definitive construction of that statute in the state courts, e.g., *Railroad Commission of Texas v. Pullman Co.*, 312 U. S., 496 (1941); *Shipman v. DuPre*, 339 U. S., 321 (1950). We also put to one side those cases in which the constitutionality of a state statute itself is drawn into question, e.g., *Toomer v. Witsell*, 334 U. S., 385 (1948)."

In that case suit was brought in a Federal Court to enjoin an order of the Alabama Public Service Commission. Without prior action by the state court, the Federal Court heard the case and rendered judgment. After pointing out that state court review was available to the plaintiff, the Supreme Court referring to the "scrupulous regard for the rightful independence of state governments which should at all times actuate the Federal Courts", said:

"Considering that 'few public interests have a higher claim upon the discretion of a chancellor than the avoidance of needless friction with state policies', the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the state courts."

In reversing the lower Court, the Supreme Court cited with approval *Great Lakes Dredge and Dock Co. v. Huffman*, 319 U. S., 293, 297-298 (1943).

The other cases referred to in the dissenting opinion are *Toomer v. Witsell*, supra, and *Doud v. Hodge*, 350 U. S., 485. *Toomer*, at best, is also negative authority. In that case jurisdiction was exercised with no discussion of the principle here involved. *Doud* merely said that the Supreme Court has never held that a District Court is without jurisdiction in such cases, although in reversing the District

Court for dismissing for lack of jurisdiction the Supreme Court expressly declined to prescribe further procedure on remand. It is obvious that the Supreme Court intended that the approved procedure of obtaining construction by the state court was to be followed:

From what has been said all that I can read into the cases cited as authority for the affirmative assertion that proceedings should be stayed until state court action *only* where an ill-defined statute is involved, is at the most of a negative character and limited to an insignificant number of cases.

The majority adopts that portion of the dissenting opinion in *Bryan v. Austin*, and proclaims as a policy of judicial interpretation that a stay of proceedings in the Federal Courts is not required in cases in which the state statutes at issue are free of doubt or ambiguity. It is respectfully submitted that the pronouncement of such a doctrine is not warranted by the authorities cited. It is true that in some few cases the Supreme Court has not required such prior interpretation but this fact falls far short of establishing a rule of procedure under which proceedings in a Federal Court in a case such as this should be stayed *only* where the statute involved is so ill-defined that its constitutionality is doubtful until it is construed judicially.

Even should the rule so announced be the correct one, it would have no application in this case, as a reasonably careful examination of the statutes will disclose the necessity for interpretation, as later pointed out.

The rule laid down by the Supreme Court and consistently followed is that cited in *Spector v. McLaughlin*, *supra*. The majority opinion has cited *Spector Motor Company and Government Employees v. Windsor*, 347 U. S., 901 and 353 U. S., 364; *Shipman v. DuPre*, *supra*; *A. F. of L. v. Watson*, *supra*. This Court is bound to follow, distinguish or disregard those cases and others to be cited. It has no power to reverse.

The language of the majority discloses that my learned associates have followed the example of the majority of the

Court of the Second Circuit in *Spector*. To again quote the Supreme Court in that case on page 103:

"On the basis of what it deemed foreshadowing 'trends', the majority ventured the prophecy that this Court would change its course, and accordingly sustained the tax. In view of the far-reaching import of such a disposition by the Circuit Court of Appeals we brought the case here."

As has been seen, after emphasizing the "deeply rooted" doctrine which it termed "this time-honored canon of constitutional adjudication", the Supreme Court reversed the Circuit Court and remanded the case to await interpretation by the state court.

The decisions of the Supreme Court proclaiming and repeating this principle called the "doctrine of abstention" in *Railroad Commission v. Pullman Company*, 312 U. S., 496, at 501, are so numerous and contain such apt expressions that determining which should be cited and discussed presents a problem. An exhaustive analysis of all would result in a repetitious and unduly long discussion.

*Railroad v. Pullman*, supra, appears a good starting point. In that case a three-judge District Court enjoined an order of the Texas Railroad Commission. On appeal the Court referred to the fact that the Court consisted of an able and experienced judge of the circuit which includes Texas and of two capable district judges trained in Texas law. Then the Court said:

"Had we or they no choice in the matter but to decide what is the law of the state, we should hesitate long before rejecting their forecast of Texas law. But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination. The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case belongs neither to us nor to the district court but to the Supreme Court of Texas. In this situation a

federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication."

Could the Court have expressed itself in clearer terms? Referring to earlier cases the Court continued:

"These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts 'exercising a wise discretion', restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary (citing cases). This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers."

The District Court was reversed and the case remanded with directions to retain the bill pending a determination of proceedings in the state court.

What change has come about since 1941 to justify a court in disregarding this clearly stated doctrine?

I find no expression from the Supreme Court changing this rule during the intervening years. On the contrary, as late as May 1947 the Court delivered its opinion in *Government Employees v. Windsor*, 353 U. S. 836. The procedural facts of that case are illuminating and significant. A labor organization and one of its members filed suit against officials of Alabama Alcoholic Beverage Control Board, of which the individual member was an employee. Plaintiffs sought an injunction and declaratory judgment to restrain the enforcement of a statute of Alabama. A three-judge court was convened. Plaintiffs contended that the statute was susceptible to no possible construction other than that of unconstitutionality and that the Federal Court should decline to stay proceedings pending action in the state court. Loss of members by the union and loss of employment benefits by the members were alleged. As here, no state action was pending. *Toomer v. Witsell*, supra.



appears to have been the authority relied upon\*by plaintiffs. The Court, after citing and discussing cases referred to by me, declined to exercise jurisdiction pending an exhaustion of state administrative and judicial remedies. 116 Fed. Supp. 354. The Supreme Court affirmed, 347 U. S. 901. Thereafter suit was filed in an Alabama Court, which declared the statute applicable to the complainant, its activities and its members and the injunction was denied. On appeal the final decree of that Court was affirmed by the Supreme Court of Alabama. 262 Alabama 785, 78 Sou. (2d) 646. The case was again submitted to the District Court. 146 Fed. Supp. 214. That Court said on *page 216*:

"After a thorough reading and consideration of the final decree of the Circuit Court of Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore mentioned, it is clear to us that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we can not assume that the state court will ever so construe said statute."

Judgment was entered accordingly.

Upon appeal the Supreme Court in a per curiam opinion (353 U. S. 364), after observing that "none of the constitutional contentions presented in the action, pending in the United States District Court were advanced in the state court action," said:

"We do not reach the constitutional issues. In an action brought to restrain the enforcement of a state statute on constitutional grounds, the federal court should retain jurisdiction until a definitive determination of local law questions is obtained from the local courts. One policy served by that practice is that of not passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. *Spector Motor Co. v. McLaughlin*, 323 U. S. 101, 105. Another policy served by that practice is the avoidance of the adjudication of abstract, hypothetical issues. Federal courts will not pass upon constitutional contentions presented in an abstract rather than in a concrete

form. *Rescue Army v. Municipal Court*, 331 U. S. 549, 575, 584. The bare adjudication by the Alabama Supreme Court that the union is subject to this Act does not suffice, since that court was not asked to interpret the statute in light of the constitutional objections presented to the District Court. If appellants' freedom-of-expression and equal-protection arguments had been presented to the state court, it might have been construed the statute in a different manner. Accordingly, the judgment of the District Court is vacated, and this cause is remanded to it with directions to retain jurisdiction until efforts to obtain an appropriate adjudication in the state courts have been exhausted."

It is worth noting that in June 1957 a three-judge United States District Court sitting in the Eastern District of North Carolina in *Lassiter v. Taylor*, 152 F. Supp., 295, had before it a case attacking the constitutionality of a statute of the state prescribing a literacy test for voters. The Court said:

"The only question in the case is whether the Act of March 29, 1957, should be declared void and its enforcement against plaintiffs enjoined by the court on the ground that it is violative of their rights under the Federal Constitution."

The Court then proceeded on page 298:

"Before we take any action with respect to the Act of March 27. (sic) 1957, however, we think that it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution. *Government and Civic Employees Organizing Committee, etc. v. S. F. Windsor*, 77 S. Ct. 838." (353 U. S. 364)

The opinion was per curiam but significantly the distinguished jurist who wrote the dissenting opinion in *Bryan v. Austin*, supra, and who sat on the Court in *Baskin v. Brown*, was a member of that Court. It should be recalled at this point that *Government Employees v. Windsor* was decided the previous month.

Inferentially at least, it would appear that the author of the dissenting opinion upon which the majority rests its decision has revised his views since that opinion was filed and has accepted the views reflected in the earlier cases of *Doby v. Brown*, *infra*, and *Hood v. Board of Trustees*, *infra*, and the later cases of *Government Employees v. Windsor*, *supra*, and *Lassiter v. Taylor*, *supra*. Attention is called to *Hudson v. American Oil Company* (E. D. Va.), now before the Court of Appeals for the Fourth Circuit, in which decision has been deferred pending a pronouncement by the Supreme Court of Appeals of Virginia of a question involving an easement in connection with which the state court has not yet announced the policy of the state.

The concurring opinion of Mr. Justice Frankfurter in *Great Lakes v. Huffman*, *supra*, contains an informative review of the legislative history of the statutes opening the inferior Federal Courts to claims arising under state statutes founded on rights under the Constitution and laws of the United States. Prior to 1875 such claims were pursued in the state courts exclusively and brought to the Supreme Court for review of the Federal question. Upon numerous occasions since 1875, Congress has placed restrictions around interference with state actions by the lower Federal Courts and in 1910 an act was passed placing jurisdiction to restrain action of state officials in a District Court consisting of three judges, with the right of appeal directly to the Supreme Court. Not satisfied with this safeguard, additional limitations have been placed upon inferior courts where the action involves matters affecting state laws. In addition to that discussion, attention is called to the action of Congress as late as 1948, when it enacted Title 28, Section 2254, United States Code, spelling out in detail a prohibition against Federal action on applications for writs of habeas corpus affecting petitioners in custody pursuant to judgment of state courts until remedies available in courts of the state have been exhausted.

In 1938, the Supreme Court decided the landmark case of *Erie v. Thompkins*, 304 U.S. 64, in which it recognized

that there had been an invasion of rights reserved by the Constitution to the states and proceeded to correct the error. The case is not in point here except as casting light on the recognition by the Supreme Court of the limited jurisdiction of Federal Courts and it emphasizes the "delicate balance" so often mentioned. The discussion of Mr. Justice Frankfurter in *Alabama v. Southern*, supra, is also illuminating. As will be seen from that opinion he interpreted the majority opinion there as laying down a fixed rule that in all such cases action by the state court is a prerequisite to interference by the Federal Court. If his interpretation of *Alabama* is correct, and it has been followed rather consistently, there is no occasion for further congressional action upon this point as suggested by the majority of this Court. This demonstrates the fallacy of the somewhat disturbing assumption of the majority opinion that unless jurisdiction has been restricted by Congress or the Supreme Court, the inferior United States courts are free to assume unlimited jurisdiction.

In *Douglas v. Jeannette*, 319 U. S. 157, and a number of similar cases, a somewhat stricter rule against jurisdiction of the Federal Courts appears to have been recognized as applicable to statutes imposing criminal sanctions such as are here involved. However, I prefer to rest my conclusions upon the broad, general rule announced in the case before cited and discussed without limiting consideration of the question to a special type of litigation. The underlying principle is the same whether the case involves a civil suit for the collection of a tax or the enforcement of a statute denouncing specified conduct as a crime. Both involve the police power and both involve the delicate balance which prevails between sovereign powers.

The cases last cited and quoted from should be sufficient to show with certainty the proper course to be followed by this Court. However, those cases by no means include all in point and, as earlier indicated, the problem here is to limit this discussion to avoid becoming burdensome with a discussion of cumulative authority. Some of the cases in

which the doctrine is announced with equal emphasis and apt language are listed in the footnote.<sup>3</sup> An examination of these cases discloses that upon numerous occasions the lower courts have undertaken to pass upon the constitutional validity of state statutes only to be reversed by the Supreme Court without consideration by it of the constitutional question, with directions that the lower court await an interpretation of the statutes by the courts of the state affected, e.g. *Railroad v. Pullman*; *Great Lakes v. Huffman*; *Alabama v. Southern*; *Government Employees v. Windsor*. There are many other cases which might be cited and discussed. These cases which have announced the law clearly, are not being followed by the majority. They have not been distinguished and only a negligible number have been cited. The majority have elected to base their decision upon authority for which the most that can be said is that

<sup>3</sup> *Matthews v. Rogers*, 284 U. S. 521, 525-526 (1932); *Great Lakes v. Huffman*, 319 U. S. 293, 296-301 (1943); *Meredith v. Winter Haven*, 320 U. S. 228, 232 (1943); *Federation of Labor v. McAdory*, 325 U. S. 450 (1945); *A. F. of L. v. Watson*, 327 U. S. 582, 600 (1946); *Rescue Army v. Municipal Court*, 331 U. S. 549 (1947); *Shipman v. DuPre*, 339 U. S. 321 (1950); *Stefanelli v. Minard*, 342 U. S. 117, 120-123 (1951); *Albertson v. Millard*, 345 U. S. 242 (1953); *Doud v. Hodge*, 350 U. S. 485 (1956); *Beasley v. Texas & Pacific*, 191 U. S. 492; *Cavanaugh v. Looney*, 248 U. S. 453, 457; *Fenner v. Boykin*, 271 U. S. 240; *Gilchrist v. Interborough*, 279 U. S. 159; *Hawks v. Hamill*, 288 U. S. 52, 61; *Harrisonville v. Dickey Clay Co.*, 289 U. S. 334; *U. S. v. Dern*, 289 U. S. 352; *Glenn v. Field Packing Co.*, 290 U. S. 177; *Lee v. Bickell*, 292 U. S. 415; *Penn. v. Williams*, 294 U. S. 176; *Spielman Motor Co. v. Dodge*, 295 U. S. 89; *Di Giovanni v. Camden*, 296 U. S. 64, 73; *Beal v. Missouri*, 312 U. S. 45; *City of Chicago v. Fieldcrest Dairies*, 316 U. S. 168; *Burford v. Sun Oil Co.*, 319 U. S. 315; *Eccles v. Peoples*, 333 U. S. 426, 431.

Among cases from lower courts peculiarly applicable are: *Lassiter v. Taylor*, 152 Fed. Supp. 295, 298; *Doby v. Brown*, 232 Fed. (2d) 504; *Hood v. Board of Trustees*, 232 Fed. (2d) 626.

For further collection of authorities see: *Tribune Review Publishing Co. v. Thomas*, 120 Fed. Supp. 362, 372, and discussion in *Meredith v. Winter Haven*, *supra*.



it is of a negative character and upon a "prophecy of foreshadowing 'trends'." This method of judicial interpretation based upon prophecy was commented upon and rejected by the Supreme Court in *Spector*.

### THE CONSTRUCTION OF THE STATUTES

This brings us to a consideration of the questioned statutes.

As far as pertinent here, *Chapters 31 and 32* deal with the authority of the state in the exercise of the police power to pass laws regulating the conduct of corporations operating within the state. Regulatory statutes of this nature are fully recognized and any number might be called to mind. *Bryant v. Zimmerman*, 278 U. S. 63, appears to be the leading case applicable here. There was involved a statute requiring the disclosure of names of members of certain organizations. Petitioner was a member of the Ku Klux Klan, an organization to which the statute was applicable. For failing to comply with the provisions of the statute petitioner was held in custody by the state authorities. Upon denial of a writ of habeas corpus by the state court he appealed to the Supreme Court of the United States. Justice McReynolds was of opinion the case should be dismissed for lack of jurisdiction without any consideration of the merits. The majority of the Court held that the case was of such nature that it had jurisdiction, but recognized the power of the state to enforce the statute saying that the rights of petitioner must yield to the rightful exertion of the police power. The petition was denied.

It has been suggested that the statute was sustained because of the nature of the activities of the Ku Klux Klan. It is true that the Court referred to such activities when discussing the exception of certain other organizations from the operation of the statute but I do not understand the language of the Court as holding that this was a decisive factor.



Another significant case is *Thomas v. Collins*, 323 U. S. 516. That case involved a Texas statute which required paid labor organizers to register with the Secretary of State and obtain an organizer's card before soliciting members within the state. An injunction was issued restraining the petitioner from violating the statute. Subsequently he was held guilty of contempt for violating the order. Habeas corpus was denied by the Supreme Court of Texas. On appeal, the Supreme Court of the United States reversed the judgment of conviction. However, at page 540 the Court said:

"We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

"Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the state might regulate in *Schneider v. State*, supra, and *Cantwell v. Connecticut*, supra. That, however, must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained." (Emphasis supplied.)

See also the concurring opinion of Mr. Justice Jackson. Cf. *Douglas v. Jeannette*, supra.

In a dissenting opinion, concurred in by Chief Justice Stone and Justice Frankfurter, beginning at page 548, Justice Roberts said:

"The right to express thoughts freely and to disseminate ideas fully is secured by the Constitution

as basic to the conception of our Government. A long series of cases has applied these fundamental rights in a great variety of circumstances. Not until today, however, has it been questioned that there was any clash between this right to think one's thoughts and to express them and the right of people to be protected in their dealings with those who hold themselves out in some professional capacity by requiring registration of those who profess to pursue such callings."

While the statutes impose the duty to register and furnish information concerning names of persons engaged in the solicitation of and contribution to funds for certain purposes, it does not prohibit the solicitation or expenditures of funds provided registration is had and the required information filed. We are not called upon at this time to determine whether the statutes are constitutional or unconstitutional. That is for the state court. Should it be proper to follow the reasoning of the majority the Court would be called upon to determine whether they are so plainly unconstitutional that by no interpretation could they be held constitutional. I have found no case under which it can be said they are so plainly in violation of the Constitution that by no interpretation can they be held otherwise.

The remaining statutes, *Chapters 33, 35 and 36*, dealing with the practice of law, are based in part upon the canons of ethics recognized by the American Bar Association, and in part are declaratory of common law offenses.

The statutes are lengthy and the language employed is involved. A consideration of key words found with relation to other general language is necessary to determine the meaning.

*Chapter 33*, as applied to attorneys, revolves around the phrase "improper solicitation". As applied to a "runner" or "capper" the act denounced is acting as an agent for an attorney, etc.

*Chapter 35* denounces as an offense the instigating or attempting to instigate a person or persons to institute a suit. The statutory definition of "instigating" is somewhat ambiguous and will require a judicial interpretation.

In *Chapter 36* the significant language to be construed relates to *inducing* one to act and the giving of advice by one whose professional advice has not been sought in accordance with the canons of legal ethics.

It clearly appears that the language employed must be construed as applied to the facts involved. Upon such construction will depend the decision of whether the statutes apply to the activities of the plaintiffs and the members of the bar employed by them.

It is difficult to understand how the majority reached its conclusion that *Chapters 31, 32 and 35* are clearly in violation of the Constitution but *Chapters 33 and 36* will require an interpretation. If this Court determines that it should hold *Chapters 31, 32 and 35* invalid, why should it not declare *Chapters 33 and 36* valid instead of referring them to the state court for interpretation?

At the hearing certain officers of the plaintiff corporations testified. Upon that testimony the majority has incorporated in its opinion a statement of the activities of the corporations with relation to the institution of litigation to which they are not parties. Assuming that statement to be correct it is questionable that *Chapters 33, 35 or 36* would be applicable to those engaged in such activities. I express no opinion upon this beyond observing that obviously a question would be involved. Certain it is that in reaching an answer to that question it will be necessary that the meaning of the statutes be construed.

Plaintiffs complain that the statutes are directed at them. Whether this be true or not is immaterial. The evidence shows there are other organizations engaged in counter activities in Virginia. However, this facts merits only passing reference. As pointed out in *Bryant v. Zimmerman*, supra, the constitutional validity of a statute

is not affected by the failure of the Legislature to pass laws covering all cases it might reach or covering the whole field of possible abuse.

I expressly refrain from expressing an opinion concerning the constitutional validity of the statutes. As applied by the courts they might be held valid, they might be found invalid or they might be held valid in part and invalid in part. The point here is that they should be construed by the courts of the State in which their enforcement will take place. Then and only then can the Federal courts properly inquire as to their invasion of rights guaranteed by the Constitution of the United States. To do otherwise would be both to dismiss the obviously questionable language used in places in the statutes and to disregard firmly established principles of construction long accepted by the Federal Courts as applicable in like situations. In this case the Court should observe the "Doctrine of Abstention" referred to by the District Court in *Government Employees v. Windsor*, 116 Fed. Supp. 354, at page 358. To do otherwise is to disregard established principles and to undertake to chart a new course of judicial construction with the hope of successfully prophesying "foreshadowing trends" of judicial action. Failure of the lower court to respect the doctrine of *stare decisis* leads to confusion. Failure to do so in this case disturbs the balance between state and Federal jurisdiction.

#### CONCLUSIONS

1. (a) The Federal Court has jurisdiction under the *Diversity Statute*.

(b) The plaintiffs being corporations are not entitled to the privileges and immunities of natural persons secured by the *Fourteenth Amendment*.

2. This Court may not inquire into the motives of the members of the General Assembly actuating them in pass-

ing the statutes but may consider legislative history when determining the meaning of statutes being construed.

3. While it is my view that the suits are premature, the fact that jurisdiction exists under the *Diversity Statute* coupled with the language of the Supreme Court in *Doud v. Hodge*, and some of the other cases considered, the proper course is to retain the case on the docket of this Court and continue them generally until the Acts have been given a definitive construction by the Courts of Virginia before the Federal Court undertakes to test their validity measured by the Federal Constitution.

/s/ STERLING HUTCHESON,  
United States District Judge.

FILED

FEB 27 1961

JAMES B. BROWNING.

In the  
**Supreme Court of the United States**

October Term, 1961

No. ~~488~~ 5

**NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,**  
*Petitioner,*

v.

**A. S. HARRISON, JR., ETC., ET AL.,**  
*Respondents.*

**BRIEF OF RESPONDENTS IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

**DAVID J. MAYS  
HENRY T. WICKHAM**  
*Counsel for Respondents*

**1407 State-Planters Bank Bldg.  
Richmond, Virginia**

**Dated: February 24, 1961**



## TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF CASE	1
ARGUMENT	16
CONCLUSION	17
CERTIFICATE OF SERVICE	218

## TABLE OF CITATIONS

Atchison, Topeka & Santa Fe Railway Company v. Jackson (10 Cir.), 235 F. (2d) 390	17
Bradwell v. Illinois, 83 U. S. (16 Wall.) 130	16
Doughty v. Grills, 37 Tenn. App. 63, 260 S. W. (2d) 379	17
Hildebrand v. State Bar of California, 36 Cal. (2d) 504, 225 P. (2d) 508	17
In re Brotherhood of Railroad Trainmen, 13 Ill. (2d) 391, 150 N. E. (2d) 163	17
In re MacLub of America, Inc., 295 Mass. 45, 3 N. E. (2d) 272	17
McCloskey v. Tobin, 252 U. S. 107	16
People ex rel. Chicago Bar Association v. Chicago Motor Club, 362 Ill. 50, 199 N. E. 1	17
People ex rel. Courtney v. Association of Real-Estate Taxpayers, 354 Ill. 102, 187 N. E. 823	17
Re Co-Operative Law Co., 198 N. Y. 479, 92 N. E. 15	17
Richmond Association of Credit Men v. Bar Association, 167 Va. 327, 189 S. E. 153	17
Schware v. Board of Bar Examiners, 353 U. S. 232	16

In the  
**Supreme Court of the United States**

October Term, 1960

No. 689

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
*Petitioner.*

v.

A. S. HARRISON, JR., ETC., ET AL.,  
*Respondents.*

**BRIEF OF RESPONDENTS IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

**I.**

**STATEMENT OF CASE**

As pointed out in the petition for writ of certiorari, the NAACP is a non-profit corporation organized under the laws of the State of New York. It is a political association for those who oppose racial discrimination.

The Statement of the petitioner ignores for the most part a large portion of the record which the Supreme Court of Appeals of Virginia considered in its opinion. This was the *orig tenus* testimony taken during the trial of the case in the Circuit Court of the City of Richmond. For this reason,

the respondents feel compelled to set forth a rather full statement of the facts of this case.

Speaking of the legal activity of the NAACP, Roy Wilkins testified in the federal district court:

"Well, under legal activity we have sought to assist in securing the constitutional rights of citizens which may have been impaired or infringed upon or denied. We have offered assistance in the securing of such rights. Where there has been apparently a denial of those rights, we have offered assistance to go to court and establish under the Constitution or under the federal laws or according to the federal processes, to seek the restoration of those rights to an aggrieved party." (Fed. Tr., pp. 170-71)<sup>1</sup>

Wilkins further testified that in assisting plaintiffs "we would either offer them a lawyer to handle their case or to help to handle their case and pay that lawyer ourselves, or we would advise them, if they had their own lawyer, would advise with them or assist in the costs of the case" (Fed. Tr., p. 177). No money ever passes directly to the plaintiff or litigant (Fed. Tr., p. 177).

The NAACP does not ask a person if he wishes to challenge a law. However, it does say publicly that it believes that a certain law is invalid and should be challenged in the courts. Negroes are urged to challenge such laws and if one steps forward, the NAACP agrees to assist (Fed. Tr., p. 178).

Although it is not in the regular course of business, pre-

---

<sup>1</sup>"Fed. Tr., p. ...." refers to the pages of the two volumes of the printed record in this Court in *NAACP v. Harrison*, October Term, 1958, No. 127, 360 U. S. 167, as introduced by the petitioner in the trial of this case in the Circuit Court of the City of Richmond, Virginia and marked plaintiff's exhibit R-9.

pared papers have been submitted at NAACP meetings authorizing someone to act in bringing lawsuits and the people in attendance have been urged to sign (Fed. Tr., p. 180).

Robert L. Carter, General Counsel for the NAACP, is paid to handle legal affairs for the corporation. Representation of the various Virginia plaintiffs falls within his duties (Fed. Tr., p. 204).

The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities" (Fed. Tr., p. 204).

Thurgood Marshall was Special Counsel for the NAACP prior to 1957 and it was his job "to advise with lawyers and the people in regard to their legal rights and to render whatever legal assistance could be rendered" (Fed. Tr., p. 312).

The Virginia State Conference of the NAACP has a legal staff composed of fifteen members and in every instance except two the plaintiffs have been represented by members of such staff in cases in which assistance is given.

All prospective plaintiffs are referred to the Chairman of the Legal Staff, Oliver W. Hill, and counsel for such plaintiffs makes his appearance when Hill has recommended that they have a "legitimate situation that the NAACP should be interested in" (Fed. Tr., p. 152).

The State Conference assists in cases involving discrimination and the Executive Board formulates certain policies to be applied in determining whether assistance will be given. Hill then applies these policies and when he decides that the case is a proper one, it is taken "automatically" with the concurrence of the President (Fed. Tr., p. 156).

Members of the Legal Staff of the State Conference may attend meetings held by the branches in their capacity as

counsel for the Conference and either the particular branch or the State Conference pay the traveling expenses incurred (Fed. Tr., p. 164).

Oliver W. Hill testified that he is not compensated as chairman of the Legal Staff. It is his duty to advise Negroes who come to him voluntarily "or directly from some local branch, or after having been directed there by Mr. Banks"<sup>2</sup> whether or not he will recommend to the State Conference that their case will be accepted (Fed. Tr., p. 207).

After a case is accepted, Hill selects the lawyer (Fed. Tr., p. 209). He refers the case to a member of the Legal Staff residing in the particular area from which the complaining party came. For the Richmond area, "one of us would frequently handle the situation" (Fed. Tr., p. 208).<sup>3</sup>

A bill for the legal services is submitted to Hill who approves it with the concurrence of the President of the State Conference (Fed. Tr., pp. 209-10).

Hill further stated that no investigation is made as to the ability of the plaintiffs to pay the cost of litigation. He feels that irrespective of wealth, a person has the right "to get cooperative action in these cases" (Fed. Tr., p. 222).

At the trial of these cases in the trial court below, W. Lester Banks testified on cross-examination that none of the school segregation cases were referred to Oliver W. Hill, Chairman of the Legal Committee of the State Conference, by him. In every instance the individual plaintiffs made con-

<sup>2</sup> Mr. Banks is executive secretary of the Virginia State Conference of the NAACP.

<sup>3</sup> It should be noted that Hill as well as Spottswood W. Robinson, III, also a member of the Legal Staff of the State Conference, both being residents of Richmond, not only represented all the plaintiffs as counsel of record in the Prince Edward, Arlington, Charlottesville, Newport News and Norfolk school segregation cases, but took active and leading parts in the trial of said cases.

tact with Hill or other members of his legal staff, and not through the Virginia State Conference (R. p. 63).<sup>4</sup>

Generally, plaintiffs in the school segregation cases do not contribute toward expenses and legal fees though they are solicited and do contribute in the NAACP's Freedom Fund (R. p. 72).

Banks, as Executive Secretary of the State Conference, speaks at meetings and urges citizens to look about them for discriminatory conditions, as do other representatives of the Conference. Individuals are also urged to assert their constitutional rights (R. p. 75).

The chairman of the legal staff (Hill) approves every item of expense and all legal fees paid by the Conference. The president of the Conference approves the legal fees and expenses of Chairman Hill. Further, in every instance, the president has approved the recommendations of the chairman (R. p. 94).

The legal staff became an official committee of the State Conference in 1945 or 1946 (R. p. 102). Its members are elected at the annual convention of the State Conference after being nominated by a nominating committee which, in turn, gets its recommendations for candidates from the legal staff (R. p. 103). The legal committee, in a sense, perpetuates itself in this manner since there has never been additional nominations from the floor of the Convention (R. p. 104).

Lawyers who wish to become members of the legal committee of the State Conference may request the president of his local branch to recommend him to the committee or he may be recommended by a member of the legal committee (R. p. 104).

---

<sup>4</sup>"R. p. ...." refers to the printed record in the court below consisting, in part, of the transcript taken in the Circuit Court of the City of Richmond, Virginia.



Without exception, when a member of the legal committee brings a lawsuit in his community he requests other members of the committee to be associated with him (R. p. 106).

The State Conference pays the expenses and fees of its lawyers for each case with the exception of the fees of Robinson which are paid by the "Fund"<sup>5</sup> in the form of an annual retainer (R. pp. 107-108).

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP requesting Hill to speak with certain parents of school children residing in Charlottesville (R. p. 109). The parents then signed papers, some of which authorized Hill to represent such parents and their children. Other authorization forms passed out at the meeting were signed with no attorney's name appearing. Hill filled in his name as attorney on these after he returned to his office in Richmond (R. p. 109).

Authorization forms for use in all the school segregation cases were prepared by Hill for his use and the use of other lawyers on the legal committee of the State Conference (R. p. 109). The form was so written as to authorize a particular attorney to associate such other attorneys as he saw fit (R. p. 110).

In the Charlottesville case Hill first associated Robinson, Martin, Ealey and Tucker, the first three being from Richmond and Tucker residing in Emporia, Virginia (R. p. 110). The General Counsel for the NAACP also came down from New York for the trial of the Charlottesville case (R. p. 110). All of the Virginia lawyers were, of course, members of the legal committee of the State Conference

---

<sup>5</sup> "Fund" refers to the NAACP Legal Defense and Educational Fund, Inc.

and are paid at the rate of \$60.00 per day for their services.

Upon examination, Hill conceded that the State Conference could have done without the services of Tucker but "it was felt that it would be advisable and helpful if as many as possible of the lawyers who were in a particular community had some participation in the [school segregation] cases" (R. p. 111). The idea was to train lawyers for future school segregation cases (R. p. 111).

The authorization form used by the litigants in the Prince Edward case authorized the firm of Hill, Martin and Robinson as attorneys. It did not authorize the association of other attorneys (R. p. 120 and plaintiff's exhibits R-12, R-13, R-14 and R-15).<sup>6</sup> However, Hill testified that the General Counsel of the NAACP was associated because:

"We don't regard the prosecution of a person's constitutional rights with the same strictness that you would regard, say, handling a contract litigation for a particular individual client. This is something that the NAACP was sponsoring. These people are actively connected with the NAACP and known to be, and these people whose rights we are trying to protect and assert are interested in getting the vindication of their rights, and they are not as much concerned about the particular lawyers in the majority of instances—as to the number of lawyers, put it that way—as a client would be who was involved in a particular single piece of private litigation." (R. p. 120)

Hill stated that it was well understood in civil rights cases that members of the NAACP and Negroes are entitled to representation by attorneys on the legal committee of the

<sup>6</sup> Since the opinion of the Supreme Court of Appeals makes reference to facts contained in various exhibits introduced by the NAACP, plaintiff below, and the respondents, defendants below, reference is here made to such exhibits.

State Conference without cost to them (R. pp. 112-113 and 121). Negroes were informed of this by Hill and others in the press, in conventions and in meetings of local branches (R. p. 113).

Hill also testified that it was generally expected that the State Conference would "sponsor" cases as long as the litigants adhered to the principles and policies of the Conference, namely, that a school case must be tried as a direct attack on segregation (R. p. 113).

S. W. Tucker of Emporia, a member of the legal committee of the State Conference, stated that his duties were "to do whatever was necessary to advance our program. That would entail a study of cases, preparation of cases, trial of cases" (R. p. 231). He was never employed or compensated by the State Conference prior to his membership on the legal committee (R. p. 232). He entered Charlottesville and Warren County school segregation cases at the suggestion of Hill and his relationship with Chairman Hill "has been so pleasant and so profitable" (R. pp. 236-237). Tucker further stated that he handled cases all over the state for the Conference and received a per diem of \$60.00 for his services (R. p. 237).

The respondents introduced certain exhibits at the trial below to show the policies of the NAACP, the State Conference and its branches, as well as the activities carried on pursuant thereto. For example, exhibit D-10 is a copy of a letter written by the Chairman of the Legal Committee, Oliver W. Hill, to W. Lester Banks, Executive Secretary of the Virginia State Conference concerning the feasibility of NAACP participation in a labor suit involving the State as the plaintiff and Robert Edwards and Willie Savage as defendants. The attorney for the defendants requested financial aid. Hill stated that it was contrary to the policy

of the State Conference to grant financial aid in cases not handled by the NAACP.

Exhibit D-4 is a copy of a letter written by the Executive Secretary of the State Conference dated July 1, 1953, wherein he stated that the NAACP was not a legal aid society. It rendered aid in criminal cases only when innocent Negroes had been charged with a crime solely because of race or color, or had been convicted of a crime when denied a proper jury trial, when a confession had been extorted through use of force, or when the accused had been denied the effective use of counsel. Banks testified that the statements contained in this exhibit still correctly state the policy of the Virginia State Conference (R. p. 222).

Respondents' exhibits D-7 and D-9 show that all members of the NAACP and their attorneys cannot participate in any lawsuit which seeks to secure separate but equal facilities. The contents of exhibit D-9, being a letter from Spottswood W. Robinson, III, to Reverend N. W. McNair, reads as follows:

"This is with reference to the matter, recently discussed with me, of participation by this office drafting a reply to a letter received by your group by the County School Board of Antelia County.

"Upon our conference you advised that the effort of your group is to obtain consolidation of Negro elementary schools in said county, and that the effort is limited to this objective.

"As you were then advised, it is not possible either for this office or the NAACP to lend assistance in connection with this effort. In June, 1950, the Association adopted a policy requiring that all education cases seek facilities and opportunities on a racially nonsegregated basis. This policy is binding upon all Association attorneys, and it is apparent that the plans of your group do not conform to this policy.

"At your request, Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, NAACP, was contacted, and he is arranging to visit your group at an early date to more fully explain the Association's policy and its recommendation as to educational matters in your county."

Respondents' exhibit D-5 likewise states the policy of the Virginia State Conference which is to eliminate racial segregation in public schools rather than seek separate but equal facilities.

Part of the respondents' exhibit D-1 is a letter dated May 26, 1954, from the Executive Secretary of the Virginia State Conference to all of its members calling for a meeting to be held in Richmond on June 6, 1954, to "develop techniques to put into immediate effect the NAACP's Atlanta Declarations." Banks also stated in this letter: "\* \* \* No conferences, petitions or other negotiations should be engaged in by NAACP or other responsible leaders with local school officials until after the June 6 meeting."

Another letter from the Executive Secretary to the local branches, dated June 16, 1954, dealt with petitions to local school boards and requested the local branches to withhold their proceedings with respect to desegregation until completion of the organization of the State Conference's program. However, forms of petitions prepared by NAACP legal department in New York in collaboration with the attorneys on the legal committee of the State Conference were forwarded to the various local branches directly from New York.

The last part of exhibit D-1 is styled a "confidential directive", dated June 30, 1955, to the local branches and signed by the Executive Secretary of the Virginia State Conference which dealt with the method of processing petitions. It reads in part as follows:

"(1). For your convenience we are enclosing four petitions (2 to the Secretary, and 2 to the President). Upon receipt of the petitions, the Chairman of your Education Committee or another responsible branch official will fill in the appropriate spaces designating (a) County or city, (b) name of School Board, and (c) name of your Division Superintendent. *Do not* fill in the last two lines at the bottom of petition.

"(2). Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of *parents* or *guardians* only. Each petition has an attached sheet for the signatures of 35 names and addresses. If a petition bearer needs additional space, provide one or more of the extra sheets being sent under separate cover.

"(3). Petitions are to be signed by *parents* or *guardians* themselves, and if they cannot write someone can sign for them letting them make an (X) mark, but be sure to have a witness to this fact.

"(4). In event a petitioner's handwriting is not *readable*, the bearer of the petition should—in a tactful manner—secure the name and address of the petitioner and attach it to the petition (example: line 15 reads: Mrs. Lucy Wright, Route 1, Box 295, Oldtown, Virginia).

"(5). Signatures should be secured from parents or guardians in all sections of the county or city. Special attention should be given to persons living in *mixed neighborhoods*, or near *formerly white schools*.

"(6). The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way.

"(7). Set an early deadline when petitions will be returned to your Education Committee's Chairman.



The quicker they are returned, the sooner your petition can be filed.

"(8). The Education Committee's Chairman will *forward completed petitions to the Executive Secretary of the State Conference.* The Chairman of the Education Committee, or other responsible branch official will furnish the State Secretary, at the time of transmittal of petitions, the name and location of *meeting site.*

"(9). Immediately upon receipt of petitions by the State Secretary, he will notify all the petitioners and branch officials that an emergency meeting will be held at the meeting site designated by the branch official.

"(10). At that meeting, everyone will be advised as to the next steps. It is absolutely necessary that all of the petitioners be present at this meeting."

The directions quoted above were established and adopted by an emergency southwide NAACP conference held in June, 1955, as shown by the defendants' exhibit D-8. It reads in part as follows: —

\*\*\* It is the job of our branches to see to it that each school board begins to deal with the problem of providing non-discriminatory education. To that end we suggest that each of our branches take the following steps:

"1. File at once a petition with each school board, calling attention to the May 31 decision, requesting that the school board act in accordance with that decision and offering the services of the branch to help the board in solving this problem.

"2. Follow up the petition with periodic inquiries of the board seeking to determine what steps it is making to comply with the Supreme Court decision.

"3. All during June, July, August and September, and thereafter, through meetings, forums, debates, conferences, etc., use every opportunity to explain what the May 31 decision means, and be sure to emphasize that the ultimate determination as to the length of time it will take for desegregation to become a fact in the community is not in the hands of politicians or the school board officials but in the hands of the federal courts.

"4. *Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.*

"5. Seek the support of individuals and community groups, particularly in the white community, through churches, labor organizations, civic organizations and personal contact.

"6. When announcement is made of the plans adopted by your school board, get the exact text of the school board's pronouncements and notify the State Conference and the National Office at once so that you will have the benefit of their views as to whether the plan is one which will provide for effective desegregation. It is very important that branches not proceed at this stage without consultation with State offices and the National office.

"7. *If no plans are announced or no steps towards desegregation taken by the time school begins this fall, 1955, the time for a law suit has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.*

"8. *At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court.*" (Emphasis added)

A memorandum written by Banks and introduced and marked as defendants' exhibit D-2 shows that the NAACP and the Virginia State Conference have continued the policies and activities outlined above. It reads in part as follows:

*"IV. Up to Date Picture of Action by NAACP Branches Since May 31.*

*"A. Petitions filed and replies*

A total of 55 branches have circulated petitions.

*"B. Where suits are contemplated*

Petitions have been filed in seven (7) counties/ cities. Graduated negative response received in all cases.

*"C. Readiness of lawyers for legal action in certain areas*

Selection of suit sites reserved for legal staff.

State legal staff ready for action in selected areas.

*"D. Do branches want legal action*

The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the national and state Conference offices. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education."

Banks explained that the language, "Where suits are contemplated" referred to places where petitions had been denied by local school boards (R. p. 217). The language

"Readiness of lawyers for legal action in certain areas" meant financial aid was available (R. p. 18). Finally, the language "Selection of suit sites reserved for legal staff" meant that members of the legal committee of the State Conference would pick the places where lawsuits would be brought (R. p. 219).

Barbara S. Marx, one of the plaintiffs in the Arlington school segregation case, testified that she is vice president of the local branch of the NAACP in Arlington County. Before the commencement of the Arlington case she signed a petition which was received by the local branch directly through the mail from the State Conference in Richmond (R. p. 171). The petition was then discussed in a branch meeting and she helped circulate it. Mrs. Marx also talked with Hill and Robinson about whether legal action would follow the refusal of the petition by the school board (R. p. 172). She also stated that she knew that Hill and Robinson would be the lawyers when the time came to file the Arlington school segregation suit (R. pp. 172-173).

Other litigants in the school cases from Arlington, Charlottesville and Newport News were examined by the respondents. All of them, with one exception, stated that they had paid no attorneys' fees and that no bills for services rendered had been submitted. Some declared that they would pay if a bill was rendered, while others said they expected the NAACP to pay the cost of attorneys' fees.

Some of the litigants examined also stated that they had no personal contact with the attorneys of the NAACP. Others stated that NAACP attorneys were used since they were members of the NAACP. Only one litigant stated that she would have brought suit even if the NAACP had not agreed to finance it.

## II.

## ARGUMENT

The respondents contend that the petition for writ of certiorari should be denied for the following reasons:

1. The state and federal courts did not reach irreconcilable conclusions as to what facts the record disclosed "on virtually the same evidence." Almost two hundred pages of additional testimony was taken during the trial in the state court. Furthermore, many exhibits showing the activities of the petitioner were introduced in the state court. This additional evidence clearly showed that the activities of the petitioner violated Chapter 33, Acts of the General Assembly of Virginia, Extra Session, 1956, and the court below so found.

2. There is no substantial federal question involved. The statute in question does not deny the petitioner, or those associated with it, the freedom to speak or assemble. Its purpose and intent is to regulate the practice of law and prohibit the solicitation of legal business. A State, under its police power, has the right to enact such statutes. *Schwabe v. Board of Bar Examiners*, 353 U. S. 232; *McCloskey v. Tobin*, 252 U. S. 107; and *Bradwell v. Illinois*, 83 U. S. (16 Wall.) 130.

3. Chapter 33 does not prohibit group sponsorship of litigation. This case does not involve the activities of a legal aid society. The petitioner does not limit its assistance to indigent persons. The petitioner does not make contributions to an individual in order that he may retain an attorney of his choice. The attorneys of the petitioner do not volunteer free legal service in aid of an indigent litigant. The petitioner exercises absolute control over litigation and stands between counsel and client contrary to the canons of

legal ethics. Compare, *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. (2d) 602.

4. The record in this case shows that the petitioner is engaged in fomenting and soliciting legal business in which it is not a party and has no pecuniary right or liability. The petitioner channels legal business to the enrichment of certain lawyers employed by it, at no cost to the litigants and over which the litigants have no control. Courts have unanimously condemned such activities. See, *Re Co-Operative Law Co.*, 198 N. Y. 479, 92 N. E. 15; *In re Maclub of America, Inc.*, 295 Mass. 45, 3 N. E. (2d) 272; *People ex rel. Courtney v. Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N. E. 823; *People ex rel. Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1; *Doughty v. Grills*, 37 Tenn. App. 63, 260 S. W. (2d) 379; *Hildebrand v. State Bar of California*, 36 Cal. (2d) 504, 225 P. (2d) 508; *Atchison, Topeka & Santa Fe Railway Company v. Jackson* (10 Cir.), 235 F. (2d) 390; *In re Brotherhood of Railroad Trainmen*, 13 Ill. (2d) 391, 150 N. E. (2d) 163; and *Richmond Ass'n of Credit Men v. Bar Association*, 167 Va. 327, 189 S. E. 153.

### III.

### CONCLUSION

For reasons set forth above it is respectfully submitted that the petition should be denied.

Respectfully submitted,

DAVID J. MAYS  
HENRY T. WICKHAM  
Counsel for Respondents

1407 State-Planters Bank Bldg.  
Richmond, Virginia

Dated: February 24, 1961



**CERTIFICATE OF SERVICE**

I hereby certify, in accordance with paragraph 1 of Rule 33, of Revised Rules of the Supreme Court of the United States, that copies of the foregoing brief have been mailed this 24th day of February, 1961 to Robert L. Carter, 20 West 40th Street, N. Y. 18, N. Y. and to Oliver W. Hill, 214 East Clay Street, Richmond 19, Virginia, Counsel of record for the petitioner, by depositing them in a United States mail box with first class postage prepaid.

**HENRY T. WICKHAM**

FILED

SEP 25 1961

JAMES H. BROWNING, Clerk

LIBRARY

IN THE

**Supreme Court of the United States**

October Term, 1961

No. 47

**NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC.,**

*Petitioner,*

v.

**FREDERICK T. GRAY, Attorney General of  
Virginia, ET. AL.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA**

**BRIEF FOR PETITIONER**

**ROBERT L. CARTER,**  
20 West 40th Street,  
New York 18, New York,  
*Attorney for Petitioner.*

**FRANK D. REEVES,**  
**MARIA L. MARCUS,**  
*of Counsel.*

# INDEX

PAGE

Opinion Below .....	1
Jurisdiction .....	1
Question Presented .....	2
Statute Involved .....	2
Statement .....	5
1. History of the Case.....	5
2. Germane Facts Concerning Petitioner's Structure and Activities in Virginia.....	7
3. Basic Evidentiary Facts Adduced at the Trials in the State and Federal Courts.....	8
A. Type of Cases Petitioner Will Support....	8
B. Control of Litigation.....	8
C. Fees and Expenses.....	9
D. Assistance Not Based On Indigence.....	10
E. Financial Aid Very Rarely, If Ever, Given in Cases Not Handled by N.A.A.C.P. Lawyers .....	10
F. Authorization Signed at Meetings of Parents .....	11
G. Problems Are Community Wide, Not Individual .....	11
H. Fees Lower Than Lawyers Normally Would Receive .....	11
J. Directives to Branches Re Petitions to School Boards .....	12
J. The Association Encourages Negroes to Assert Their Rights and Offers Assistance in Civil Rights Litigation.....	12
4. Conflicting Conclusions as to the Meaning of These Facts Reached by Federal and State Courts .....	12

**Summary of Argument**

**Argument:**

I. Petitioner Uses the Technique of Test Litigation for the Sole Purpose of Seeking to Obtain Equal Rights and Opportunities, Under Law, for Negro Citizens .....	15
II. Petitioner's Activities Neither Constitute Barratry Nor Involve Unprofessional Conduct as Those Terms Are Generally Defined.....	17
III. The Decision Below Contravenes the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States .....	26
IV. The Virginia Statute, in Purpose and Intendment, Constitutes Discriminatory Race Legislation Within the Meaning of the Decisions of this Court .....	29
V. Conclusion .....	39

**Cases Cited**

Alston v. School Board, 112 F. 2d 993 (C. A. 4, 1940), cert. denied, 311 U. S. 693.....	16
Ashwander v. Tenn. Valley Authority, 297 U. S. 288 .....	14, 16
Barbier v. Connally, 113 U. S. 27.....	38
Bates v. Little Rock, 361 U. S. 516.....	7
Brown v. Board of Education, 347 U. S. 483..	14, 16, 29, 33
Chambers v. Florida, 309 U. S. 227.....	16
Crandall v. Nevada, 6 Wall 36 .....	38

Davies v. Stowell, 78 Wis. 334, 47 N. W. 370 (1890) .....	19
Evers v. Dwyer, 358 U. S. 202 .....	14, 16, 29
Gayle v. Browder, 352 U. S. 903, affirming 142 F. Supp. 707 (M. D. Ala. 1956) .....	29
Gomillion v. Lightfoot, 364 U. S. 399 .....	30
Gunnels v. Atlanta Bar Association, 191 Ga. 366, 12 S. E. 2d 602 (1940) .....	18, 24
Hill v. Texas, 316 U. S. 400 .....	16
Hovey v. Hobson, 51 Maine 62 (1863) .....	18
In re Ades, 6 F. Supp. 467 (D. C. Md. 1934) .....	19, 24
In re Cooperative Law Co., 198 N. Y. 479, 485, 92 N. E. 15, 16 (1910) .....	22
International Union v. Wisconsin Employment Relations Board, 336 U. S. 245 .....	37
Konigsberg v. State Bar of Calif., 353 U. S. 252 .....	28
Lane v. Wilson, 307 U. S. 268 .....	16
Louisiana v. N.A.A.C.P., 366 U. S. 293 .....	7
Marbury v. Madison, 1 Cranch. 137, 165-166 .....	14, 16
Massachusetts v. Mellon, 262 U. S. 447 .....	14, 16
Mayflower Farms v. Ten Eyck, 297 U. S. 266 .....	27
McLaurin v. Oklahoma State Regents, 339 U. S. 637 .....	16, 29
Missouri ex rel. Gaines v. Canada, 305 U. S. 337 .....	16
Morey v. Doud, 354 U. S. 457 .....	27, 37
N.A.A.C.P. v. Alabama, 357 U. S. 449 .....	7, 27, 37
National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1 .....	37
Nebbia v. New York, 291 U. S. 502 .....	28
Nixon v. Condon, 286 U. S. 73 .....	16
Nixon v. Herndon, 273 U. S. 536 .....	16
Oyama v. California, 332 U. S. 633 .....	29

People ex rel. Hoyne v. Grant, 208 Ill. App. 235, 245 (1918) .....	22
Philadelphia Co. v. Stimson, 223 U. S. 605 .....	14
Rice v. Farrell, 129 Conn. 362, 28 A. 2d 7. (1942) ....	18
Royal Oak Drain Dist of Oakland County, Michigan v. Keefe, 87 F. 2d 736 (C. A. 6, 1937) .....	19
Ryan v. Pennsylvania Ry. Co., 268 Ill. App. 364 (1932) .....	23
Schwartz v. Board of Bar Examiners, 353 U. S. 232 .....	14, 28
Shelley v. Kramer, 334 U. S. 1 .....	14
Skinner v. Oklahoma, 316 U. S. 585 .....	27, 28
Shepherd v. Florida, 341 U. S. 50 .....	16
Sipuel v. Board of Regents, 332 U. S. 631 .....	16
Slaughter Houses Cases, 16 Wall 36 .....	38
Smith v. Allwright, 321 U. S. 649 .....	14, 16
Stark v. Wickard, 321 U. S. 238 .....	13, 16, 29
State Athletic Commission v. Dorsey, 359 U. S. 533, affirming 168 F. Supp. 149 (E. D. La. 1958) .....	29
Sweatt v. Painter, 339 U. S. 629 .....	14, 16, 29
Takahashi v. Fish & Game Commission, 334 U. S. 410 .....	29
Terral v. Burke Construction Co., 257 U. S. 329 .....	38
Thallime v. Brinckerhoff, 3 Cow 623, 15 Am. Dec. 308 (N. Y. Ct. of Errors 1824) .....	18
Truax v. Corrigan, 257 U. S. 312 .....	38
United States v. Lancaster, 44 Fed. 885 (1890 D. Ga.) .....	38
Williams v. Page, 24 Beav. 654, 53 Eng. Rep. 510 (1858) .....	25
Yick Wo v. Hopkins, 118 U. S. 356 .....	29



## Other Authorities

	PAGE
American Bar Association, "Opinions of the Committee on Professional Ethics and Grievances, Opinion 282 (1950) .....	23
American Bar Association, "Opinions of the Committee on Professional Ethics and Grievances, Opinion 168 (1937) .....	24
Brownell, Emery, "Legal Aid in the United States," 1951 .....	39
Jackson, Robert "The Struggle for Judicial Supremacy" (1941) .....	39
Note, 3 R. Rel. L. Rep. 1257 .....	24
Pound, Roscoe, "Spirit of the Common Law" (1921) .....	28
Radin, "Maintenance by Champerty," 24 Calif. L. Rev. 48 (1935) .....	18, 25
Smith, R. H., "Justice and the Poor," 3rd Ed. (1924) .....	39
Weihsfen, "Practice of Law By Non-Pecuniary Corporations: A Social Utility," 2 U. of Chi. L. Rev. 119 (1934) .....	22

IN THE

# Supreme Court of the United States

October Term, 1961

No. 44

---

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE, ETC.,

*Petitioner,*

v.

FREDERICK T. GRAY, Attorney General of Virginia, *et al.*

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA

---

## BRIEF FOR PETITIONER

---

### Opinion Below

The opinion of the Supreme Court of Appeals of Virginia (R. 508) is reported at 202 Va. 142, 116 S. E. 2d 55. The opinion of the United States District Court for the Eastern District of Virginia, filed *sub nom* N.A.A.C.P. v. *Patty* (E. D. Va. 1958), which is the same case and with virtually the same evidentiary facts, is reported at 159 F. Supp. 503, vacated and remanded on application of the doctrine of federal abstention, *sub nom* *Harrison v. N.A.A.C.P.*, 360 U. S. 167.

### Jurisdiction

The judgment of the Supreme Court of Appeals was entered on September 2, 1960 (R. 534), and petition for rehearing was denied on October 12, 1960 (R. 535). The

petition for writ of certiorari was filed on January 31, 1961, and was granted on March 20, 1961 (R. 537). An order to substitute parties-respondent was entered by this Court on June 19, 1961 (R. 537). Application for an extension of time to file petitioner's brief on the merits to and until September 24, 1961, was granted by this Court on August 14, 1961. This Court has jurisdiction of this cause pursuant to Title 28, United States Code, Section 1257(3).

### **Question Presented**

Whether a statute, which bars petitioner and its local affiliates from underwriting the cost and providing counsel in litigation designed to test the validity of state-imposed racial discrimination on the ground that such activities constitute the unlawful fomenting and solicitation of legal business, and which makes counsel who participate in such cases guilty of malpractice and unprofessional conduct, contravenes the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and abrogates constitutional guarantees of free access to the courts?

### **Statute Involved**

Code of Virginia, 1950, §§ 54-74, 54-78, 54-79:

1. That §§ 54-74, 54-78 and 54-79 of the Code of Virginia be amended and reenacted as follows:

§ 54-74. (1) Issuance of rule—If the Supreme Court of Appeals, or any court of record of this State, observes, or if complaint, verified by affidavit, be made by any person to such court of any malpractice or of any unlawful or dishonest or unworthy or corrupt or unprofessional conduct on the part of any attorney, or that any person practicing law is not duly licensed to practice in this State, such court shall, if it deems the case a proper one for such action, issue a rule against such attorney or other

person to show cause why his license to practice law shall not be revoked or suspended.

(2) *Judges hearing case.*—At the time such rule is issued the court issuing the same shall certify the fact of such issuance and the time and place of the hearing thereon, to the chief justice of the Supreme Court of Appeals, who shall designate two judges, other than the judge of the court issuing the rule, of circuit courts or courts of record of cities of the first class to hear and decide the case in conjunction with the judge issuing the rule, which such two judges shall receive as compensation ten dollars per day and necessary expenses while actually engaged in the performance of their duties, to be paid out of the treasury of the county or city in which such court is held.

(3) *Duty of Commonwealth's attorney.*—It shall be the duty of the attorney for the Commonwealth for the county or city in which such case is pending to appear at the hearing and prosecute the case.

(4) *Action of court.*—Upon the hearing, if the defendant be found guilty by the court, his license to practice law in this State shall be revoked, or suspended for such time as the court may prescribe; provided, that the court, in lieu of revocation or suspension, may, in its discretion, reprimand such attorney.

(5) *Appeal.*—The person or persons making the complaint or the defendant, may, as of right, appeal from the judgment of the court to the Supreme Court of Appeals by petition based upon a true transcript of the record, which shall be made up and certified as in actions at law.

(6) "Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct", as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, cor-

poration, organization or association has violated any provision of Article 7 of this chapter, or the failure, without sufficient cause, within a reasonable time after demand, of any attorney at law, to pay over and deliver to the person entitled thereto, any money, security or other property, which has come into his hands as such attorney; provided, however, that nothing contained in this Article shall be construed to in any way prohibit any attorney from accepting employment to defend any person, partnership, corporation, organization or association accused of violating the provisions of Article 7 of this chapter.

(7) Representation by counsel.—In any proceedings to revoke or suspend the license of an attorney under this or the preceding section, the defendant shall be entitled to representation by counsel.

§ 54-78. As used in this article:

(1) A "runner" or "capper" is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated.

The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit or procure business for such person, partnership, corporation, organization or association or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.

(2) An "agent" is one who represents another in dealing with a third person or persons.

§ 54-79. It shall be unlawful for any person, corporation, partnership or association to act as a runner or capper as defined in § 54-78 to solicit any business for an attorney at law or such person, partnership, corporation, organization or association, in and about the State prisons, county jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, police courts, county courts, municipal courts, courts of record, or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

2. An emergency exists and this act is in force from its passage.

## Statement

### 1. History of the Case

The above-cited legislation was enacted at the 1956 Extra Session of the General Assembly of Virginia as a part of a so-called plan of "massive resistance" to the elimination of state-imposed racial discrimination required by decisions of this Court. See *N.A.A.C.P. v. Patti*, at pages 511-515.

Litigation commenced in this case November 28, 1956, when petitioner filed a complaint in the United States District Court for the Eastern District of Virginia attacking the constitutionality of the instant statute, along with Chapters 31, 32, 35 and 36 of the Acts of the 1956 General Assembly, Extra Session. Chapters 31, 32 and 35 were struck down, but petitioner was advised to seek an authoritative construction of the instant statute and of Chapter 36 in the state courts. *N.A.A.C.P. v. Patti*, *supra*.



Thereupon, on May 20, 1958, the present proceedings were instituted in the Circuit Court of the City of Richmond. Petitioner prayed for a binding adjudication that its activities and those of its local affiliates, in advising Negroes to vindicate their constitutional rights in the courts and in defraying the costs and providing counsel in such litigation, were lawful; that litigants, in seeking, receiving or accepting such assistance, and lawyers, in acting as counsel in litigation supported by petitioner and its local affiliates, were likewise exercising legitimate functions. The complaint prayed for a declaratory judgment that such activities of petitioner, litigants and cooperating attorneys did not violate the statutes aforementioned; or that if these statutes were violated, their enforcement must be enjoined, since the statutes contravened the guarantees of due process and equal protection secured under the Fourteenth Amendment to the Constitution of the United States, and abrogated the constitutionally-secured rights of all persons in the United States to free access to the courts (R. 1-10).

In both the trial court and in the Supreme Court of Appeals below, the aforesaid activities of petitioner, its local affiliates and cooperating attorneys, who functioned as members of the legal staff of the State Conference, were held to constitute fomenting and unlawful solicitation of legal business and to violate basic ethical concepts governing the Virginia Bar—all prohibited by the legislation at issue here.<sup>1</sup> Whereupon, petitioner brought the cause to this Court.

---

<sup>1</sup> In the Supreme Court of Appeals (R. 527, *et seq.*), Chapter 36 (Code of 1950; §§ 18.1-394 to 18.1-400) was found to be at war with the state's obligation imposed by the equal protection clause of the Fourteenth Amendment.

## 2. Germane Facts Concerning Petitioner's Structure and Activities in Virginia

In view of the Court's familiarity with petitioner's aims, purposes and basic organizational structure (see *N.A.A.C.P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516; *Louisiana v. N.A.A.C.P.*, 366 U. S. 293), explication in that regard will be omitted. However, such information may be found in the testimony of Messrs. Banks and Wilkins at pages 250-322 in this record.

There is no dispute or controversy as to the facts. In Virginia, petitioner's local affiliates have formed a state-wide organization called the Virginia State Conference of N.A.A.C.P. Branches (R. 251). That organization has the usual executive officers and a Board of Directors, who serve without salary (R. 251). The Conference employs an Executive Secretary as a full-time paid employee (R. 250). Approximately 15 Virginia attorneys, who are willing to devote a part of their time, effort and professional skill to the elimination of racial discrimination in the state, comprise the legal committee or legal staff of the Conference (R. 48-49, 57-60, 265). These men serve on the committee without compensation, although each attorney, when actually engaged in litigation under N.A.A.C.P. auspices, receives a fixed per diem and expenses (R. 93).

The Conference involves itself in litigation only when racial discrimination is at issue. In some cases, a complainant comes to the Executive Secretary, and if the latter feels the matter is sufficiently meritorious, he refers the person to the Chairman or some other available member of the legal staff. If the Chairman feels that the matter raises a legal issue of racial discrimination which warrants N.A.A.C.P. support, and the President of the Conference acquiesces, support is given. In other cases, direct contact is made with members of the legal staff where N.A.A.C.P. assistance is desired (R. 65, 170). Support consists of the payment of all financial costs incident to the litigation, and

making provision for one or more members of the legal staff to act as counsel for the complainant (R. 19-20, 259-275).

Officials of the N.A.A.C.P. at the national, state and local level make a general practice of advising Negroes of their rights in regard to matters of racial discrimination, and of urging them to contest deprivations thereof in the courts where necessary. It is also common knowledge that petitioner and its local affiliates assist persons, victimized by racial discrimination, in prosecuting the claimed infractions through the courts, with the individual litigant being under no obligation to pay the requisite legal fees or expenses. Moreover, the N.A.A.C.P.'s interest in eliminating racial discrimination is so widely known that many persons come to it seeking assistance because of this knowledge (R. 146, 264).

### **3. Basic Evidentiary Facts Adduced at the Trials in the State and Federal Courts**

#### *A. Type of Cases Petitioner Will Support —*

The hearing in the state court disclosed that petitioner will support litigation if it constitutes a broad attack against racial segregation *per se* (R. 69, 70, 94, 240); and that legal action at the local level is coordinated through the National Office (R. 216). Essentially the same facts are a part of the record of the hearing in the District Court (R. 263).

#### *B. Control of Litigation*

While petitioner only underwrites litigation aimed at the elimination of racial segregation, *per se*, once legal action is begun, the organization exercises no further control. When the lawyer-client relationship is established between the litigant and counsel, all action thereafter is taken with the client's consent (R. 207).

This question was explored extensively in the District Court during cross-examination of W. Lester Banks, Executive Secretary of the Virginia State Conference of Branches:

Q. But within those limitations [i.e., that matter must involve a frontal attack on racial segregation], you leave it entirely to the litigant and the attorney as to the manner in which the litigation is conducted?

A. That is correct.

Q. And the Conference does not interfere?

A. The Conference has nothing to do with the attorney and the litigant." (R. 263).

Roy Wilkins, the Executive Secretary of the Association, testified under cross-examination to the same effect:

Well, I have heard our lawyers say many times that they could not do anything that the plaintiff does not want done. I have heard them stop in the middle of a case, after they had reached a certain stage, and I have sat in on these conferences that took place on strategy, in which they have said, "Well, before we can go further, we will have to find out what the plaintiff wants to do." (R. 302).

Mr. Robinson, one of the members of the Conference legal staff, stated, "I think it is fair to say that I am, first, the attorney for the litigants who are involved" (R. 411).

#### *C. Fees and Expenses*

The Virginia State Conference of Branches or petitioner pays the fees and expenses of the attorneys when they are handling a case involving discrimination, supported by the state or the national organization.

In the state court, Oliver Hill, Chairman of the Virginia State Conference legal staff, said "We admit that the State Conference has been sponsoring all this litigation and paying the attorneys' fees. There is no denial of that" (R. 101). A fee of \$60 per day is paid to the

attorneys (R. 93) who are almost invariably members of the legal staff. In the District Court, Mr. Banks said "The conference, in situations involving racial discrimination, aids in supplying monies that are used to pay counsel fees and expenses, in litigation of that character . . ." (R. 259). Whatever funds are necessary are paid to the attorney involved; and no money is paid to the litigant (R. 260).

#### *D. Assistance Not Based On Indigence*

There was testimony in the state court indicating that some of the plaintiffs in the school cases are not indigent. Some were shown to own property or to be gainfully employed (R. 95-173). There is no investigation by the Association of whether plaintiffs have the ability to pay (R. 101), although after the enactment of the present statute, litigants were advised that if this legislation was upheld, they would have to assume financial responsibility for their cases (R. 64).

In the District Court, Mr. Hill stated that he saw nothing wrong with a plaintiff fighting a public problem at his own expense, but that there was nothing wrong with his getting a group to assume the financial obligation involved in such a case, even if the plaintiff had the means to prosecute the matter on his own (R. 338).

#### *E. Financial Aid Very Rarely, If Ever, Given in Cases Not Handled by N.A.A.C.P. Lawyers*

Testimony in the state court showed that no financial aid was given in cases not handled by attorneys associated with the N.A.A.C.P. (R. 248). In the District Court, it was stated that fees occasionally were paid to lawyers other than those connected with State Conference, but that almost always N.A.A.C.P. attorneys were involved (R. 260, 275).

### *F. Authorizations Signed at Meetings of Parents*

The evidence in both trials indicates that a majority of the authorizations given by plaintiffs to attorneys in school desegregation cases were signed at meetings of parents and interested citizens. Such meetings were not called for the purpose of obtaining plaintiffs (R. 296), but were held to disseminate information and to announce the Association's views (R. 295).

In the state court, there was testimony that generally an individual would ask an N.A.A.C.P. attorney to come to his community to speak to a group of parents interested in doing something about school segregation (R. 66). At such meetings the audience would be advised concerning their rights (R. 81-84). Petitions, with space for names of parents or guardians requesting local school boards to comply with their constitutional obligations, would be made available (R. 218), and parents, who wished to do so, were given the opportunity to sign retainers authorizing members of the Conference legal staff to represent them (R. 66, 124, 148). These were signed only if the persons wished to do so (R. 450). No one was kept in the case who desired to withdraw (R. 34, 89, 345). The usual retainer specified that the attorneys were free to associate with whatever other attorneys they saw fit (R. 66). If more than one lawyer in the community was interested in a particular case, all usually would participate (R. 61).

### *G. Problems Are Community Wide, Not Individual*

Both records showed that the Association felt that the problems involved and the cases undertaken did not merely concern the plaintiffs, but affected the whole Negro community (R. 79, 338), and that Conference attorneys were representing the entire Negro community in these cases.

### *H. Fees Lower Than Lawyers Normally Would Receive*

The fees received were, for the most part, a small and insubstantial part of the Conference attorneys' total income



from their individual practice of law, and the time put into the N.A.A.C.P. cases was far out of proportion to the remuneration received therefor (R. 180, 225-226, 392, 397, 401).

*I. Directives to Branches Re Petitions to School Boards*

A directive was sent to member branches of the Virginia State Conference requesting the branches to organize parents of children of school age and available community resources to petition school boards to desegregate their schools. A sample petition was included. The directive stated that an effort should be made to secure "petitioners who will—if need be—go all the way," since the signing of the petition might be the first step in an extended court fight (R. 218). There was no evidence concerning this directive in the federal court.

*J. The Association Encourages Negroes to Assert Their Rights and Offers Assistance in Civil Rights Litigation*

In the District Court, Mr. Wilkins had stated that the Association offered to assist persons to go to the courts to establish their constitutional right to equality under law (R. 287).

**4. Conflicting Conclusions as to the Meaning of These Facts Reached by Federal and State Courts**

Except for the directive to the Branches concerning petitioning school boards and specific evidence that some of the plaintiffs in the school cases were owners of real property and were gainfully employed (but testimony in the District Court clearly specified that no effort was made to establish financial ability before offering to render aid), there were no matters of substance disclosed at the state trial which added to, modified or altered the testimony adduced in the United States District Court.

On the basis of these virtually identical evidentiary facts, the state court found that petitioner's activities constituted the illegal fomenting and solicitation of legal business; and that the lawyers who customarily provide professional services in N.A.A.C.P. cases violated basic concepts of professional ethics (R. 532-533).

The District Court, on the other hand, found that petitioner's activities did not amount to solicitation of business or a stirring-up of litigation of the sort condemned by the Bench and Bar, and that Canon 35 of the Canons of Professional Ethics of the American Bar Association condoned petitioner's activities (*N.A.A.C.P. v. Patty* at p. 532). While finding the instant statute obscure and difficult to understand, the court said "the general purpose seems to be to hit any organization which participates in a law suit in which it has no financial interest and also to fasten the charge of malpractice upon any lawyer who accepts employment from such an organization.. If the statute should be so interpreted as to forbid a continuance of the activities of [petitioner] in respect to litigation as described in this opinion, it would in large measure destroy [the Association's] effectiveness (*Id.* at p. 534).

### Summary of Argument

Petitioner, in aiding Negroes to vindicate their constitutional right to be free of state imposed racial discrimination, is not engaged in activity that threatens the integrity of the judicial process, unless discouragement of litigation is to be regarded as a desirable end in itself. Petitioner, and the attorneys who act as counsel in the civil rights litigation it supports, are merely making use of the court process to test the constitutional validity of various state acts alleged to be racially discriminatory.

The "test" case is an accepted method of settling controversies in the United States, particularly in the field of public law. See *Stark v. Wickard*, 321 U. S. 288. Because of the "case or controversy" prerequisite to the exercise of

jurisdiction by American courts, see *Marbury v. Madison*, 1 Cranch 137, 165-166; *Philadelphia Co. v. Stimson*, 223 U. S. 605, 619; *Massachusetts v. Mellon*, 262 U. S. 447, 488; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288; *Evors v. Dwyer*, 358 U. S. 202, public officials may engage in activities obviously invalid, and a state may enforce regulations clearly unlawful, until a party with standing to sue challenges the activity or regulations in the courts. This is especially true, when what is done affects an unpopular minority and is in keeping with what the majority accepts as appropriate.

Here, petitioner has engaged in litigation solely for the purpose of helping to improve the status of the Negro in American life. Some of the cases it has supported, e.g., *Smith v. Allwright*, 321 U. S. 649; *Shelley v. Kraemer*, 334 U. S. 1; *Sweatt v. Painter*, 339 U. S. 629; *Brown v. Board of Education*, 347 U. S. 483, have become landmark decisions in the development of constitutional law.

Petitioner is a non-profit membership organization, and, therefore, no profit accrues to it or its members. The lawyers involved may gain experience and repute, but very little pecuniary advantage. There is no coercion on persons to be plaintiffs or financial inducement to litigate. It may well be true that many of the people whom petitioner has aided in testing a claimed issue of racial discrimination might not otherwise have brought the law suit. In view of the high and frequently prohibitive cost of litigation, however, the assistance offered by petitioner is an aid not a deterrent to the administration of justice.

The instant statute applies standards respecting the conduct of the legal profession which are so at variance with yardsticks universally accepted as controlling as to deny due process. Cf. *Schwartz v. Board of Bar Examiners*, 352 U. S. 232. Moreover, the effect of the statute is to prohibit petitioner's giving assistance to Negroes to vindicate their constitutional rights to be free of racial discrimi-

nation, while leaving the state free to utilize every available resource to maintain the status quo.

For these reasons, petitioner contends that the legislation denies due process and equal protection of the laws to petitioner, its members, the litigants it aids and co-operating attorneys, and violates constitutional guarantees of Article III of free access to the courts.

## ARGUMENT

### I

#### **Petitioner Uses the Technique of Test Litigation for the Sole Purpose of Seeking to Obtain Equal Rights and Opportunities, Under Law, for Negro Citizens.**

Petitioner's basic aim is to remove all racial barriers to first-class citizenship for Negro Americans in the United States. When petitioner began its operations early in the Twentieth Century, colored citizens had only the weakest and most ineffectual political resources at the national and state level. Indeed, only recently has the Negro gained sufficient viability in the realm of politics to be able to bring to bear enough pressure to secure the enactment of national civil rights legislation designed to insure the right to vote—the first such legislation to pass Congress since Reconstruction.<sup>2</sup> In the South, even today, he still remains largely politically impotent and has little impact on state legislative or executive action. Moreover, until 1954, racial discrimination appeared to have a valid warrant in American constitutional law. Therefore, apparently the most efficacious method to undermine the barriers to racial equality was to strike at their support in the fundamental law.

---

<sup>2</sup> Civil Rights Acts of 1957 and 1960: Title 42, United States Code, § 1971 (74 Stat. 90); §§ 1974-1974e (74 Stat. 88); §§ 1975-1975 e (71 Stat. 636); § 1995 (71 Stat. 638).

Illegalities and unconstitutionality such as racial discrimination may exist with complete impunity until their claimed invalidity is tested in litigation. The activities of petitioner organization has been limited to court action in this category, e.g., *Lane v. Wilson*, 307 U. S. 268; *Nixon v. Herndon*, 273 U. S. 536; *Nixon v. Condon*, 286 U. S. 73; *Smith v. Allwright*, 321 U. S. 649 (disfranchisement based upon race); *Alston v. School Board*, 112 F. 2d 993 (C. A. 4, 1940), cert. denied, 311 U. S. 693 (discrimination in respect to teachers' salaries); *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Sipuel v. Board of Regents*, 332 U. S. 631; *Sweatt v. Painter*, 339 U. S. 629; *McLaurin v. Oklahoma State Regents*, 339 U. S. 627 (discrimination at the graduate and professional school level); *Brown v. Board of Education*, 347 U. S. 483 (discrimination at the grade school level).<sup>3</sup> Indeed, it was by virtue of its successful use of the test case technique that petitioner gained national prominence as a civil rights organization. Such "test" cases, *Stark v. Wickard*, 321 U. S. 288; *Evvers v. Dwyer*, 358 U. S. 202, are a necessary product of American jurisprudence, since, with rare exceptions, our courts will exercise jurisdiction only where a "case or controversy" exists between real parties in interest. See *Marbury v. Madison*, 1 Cranch 137, 165-166; *Massachusetts v. Mellon*, 262 U. S. 447, 488; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 324; *Evvers v. Dwyer*, *supra*.

The net effect of the litigation which petitioner has helped prosecute, some of which was brought to this Court, was the development of constitutional doctrine that governmentally-fostered racial discrimination is impermissible. As in Virginia, the aforementioned litigation was handled

<sup>3</sup> Of course, petitioner has helped fight through the courts a number of criminal cases on behalf of defendants where the issue involved a claimed lack of procedural or substantive due process based upon race, e.g., *Shepherd v. Florida*, 341 U. S. 50; *Hill v. Texas*, 316 U. S. 400; *Chambers v. Florida*, 309 U. S. 227.

by lawyers associated with petitioner organization, and all the necessary court costs, expenses and fees were paid by petitioner and its local affiliates on the theory that determination of the matter involved was in the public interest. The cases are usually class actions, since the issues transcend individual interests, and decision therein affects the whole complex of race relations in this country. It is hard to conceive of this kind of active and imaginative use of the law as a social force to improve the status of colored citizens in the society, being equated with barratry, illegal solicitation of legal business or with activities which are at war with basic concepts of professional ethics.

While it is possible to overstress this fact, it is hardly open to question that without petitioner's use of the court process to test the validity of racial discrimination, some of the most important breaches in the wall of segregation would not as yet have been effected.

## II

### **Petitioner's Activities Neither Constitute Barratry Nor Involve Unprofessional Conduct as Those Terms are Generally Defined.**

Barratry has been defined as the unlawful instigation and solicitation of legal business; maintenance as the financing of an action in which the sponsor has no interest; champerty as financing another's cause for a share of the profits. At the time the doctrines of barratry, champerty and maintenance arose, the feudal English lords and large landowners would buy up contested claims against each other or against commoners with whom they had a dispute. The landowners would then bring suit in order to harass and oppress those in possession, in order to increase their holdings. By way of self-defense, a commoner who wished



to secure his title would convey a part of his property to some powerful person, who would use his influence to protect the commoner's interest. The lack of sufficient written conveyances and records, the feudal relationship between lord and vassal and the rudimentary forms of trial—all augmented the power of the landowners to bring false claims and to subvert the independence of judicial tribunals. *Hovey v. Hobson*, 51 Maine 62, 64 (1863).

With the fragmentation of many large estates through legal and economic changes and with the development of recording procedures, this category of private warfare between landowners went out of existence. However, the rising merchant class engaged in business practices that occasioned new application of the prohibitions against barratry and champerty. Merchants and lawyers would support claims in which they had no interest in order to obtain a large share of the profits. Lawyers, as the competition in the legal profession grew, would attempt to get fees by soliciting legal business, sometimes employing agents to channel business to them. Radin, "Maintenance by Champerty," 24 *Calif. L. Rev.* 48 (1935). Thus, although the original concepts of barratry and champerty had become obsolete, commercialization now was the evil which threatened to corrupt the legal process.

Completely distinct from profit-making and profit-sharing are acts of charity, *Rice v. Farrell*, 129 Conn. 362, 28 A. 2d 7, 9 (1942), and the use of the lawyer's skills in the public interest. See *Thalhime v. Brinckerhoff*, 3 Cow 623, 15 Am. Dec. 308 (N. Y. Ct. of Errors 1824). Barratry does not exist where the "sole object is the attainment of public justice or private rights." Laws should be aimed at "prostitution of these remedies to mean and selfish purposes." 139 A. L. R. 623 (1942); see also *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. 2d 602 (1940). This distinction has been stressed in many decisions and in numerous jurisdictions.

In *In re Ades*, 6 F. Supp. 467 (D. C. Md. 1934), for example, where the International Labor Defense employed an attorney to represent defendants it believed to be falsely accused of crime, the court stated at pages 475, 476:

... it cannot be laid down as an inflexible maxim that a lawyer may never volunteer his services to a litigant, where the litigant is in need of assistance, or where important issues are involved in the case; and this may be so even though questions of a controversial or political character are at stake. . . . a general statement that one solicited employment without showing that such solicitation was in a dishonorable or disreputable way is not a sufficient charge to justify suspension or disbarment.

There is no authority for the proposition that a defendant without financial means should be compelled to accept counsel appointed for him by the court, and should be denied the right to avail himself of voluntary services offered by an independent organization.

Again, in a suit by a bondholder's protective committee to determine the validity of bonds, the court held that the offense of barratry had not been committed since there was "nothing in the record to indicate that the purpose of the plaintiff committee was to solicit employment for lawyers." *Royal Oak Drain Dist of Oakland County, Michigan v. Keefe*, 87 F. 2d 786, 789 (C. A. 6, 1937).

Another example is *Davies v. Stowell*, 78 Wis. 334, 336, 337, 47 N. W. 370, 371 (1890), in which it was stated that barratry or maintenance does not extend to "persons acting in the lawful exercise of their profession, as counsel or attorneys at law." In addition, the court said: "The practical effect of a suit and recovery by one party wronged will inure to the benefit of others similarly situated."

In this case, the federal court (*N.A.A.C.P. v. Patty*), in analyzing a companion statute to the one now before

the court, makes the distinction between abuses which constitute barratry and attempts to vindicate the rights of citizens, with particular reference to petitioner organization. There it said at page 532 *et seq.*:

It is manifest . . . that the activities of the plaintiff corporations are not undertaken for profit or for the promotion of ordinary business purposes but, rather, for securing the rights of citizens without any possibility of financial gain. . . . Indeed the exclusion of lawyers when acting for benevolent purposes and charitable societies, as distinguished from business corporations, from the restrictions imposed by the canons of Professional Ethics has long been recognized in the approval given by the courts to services voluntarily offered by members of the bar to persons in need, even when the attorneys have been selected by corporations organized to serve a cause. In a controversial field . . .

Chapter 35, in failing to recognize this settled rule, violates well-established constitutional principles in its bearing upon the plaintiff corporations. "A state cannot exclude a person from the practice of law or from any other occupation in a manner and for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment". In the first place, the statute obviously violates the equal protection clause, for it forbids the plaintiffs to defray the expenses of racial litigation, while at the same time it legalizes the activities of legal aid societies that serve all needy persons in all sorts of litigation. No argument has been offered to the court to sustain this discrimination. Moreover, Chapter 35 violates the due process clause, for it is designed to put the plaintiff corporations out of business by forbidding them to encourage and assist colored persons to assert rights established by the decisions of the Supreme Court of the United States. The activities of the plaintiffs as they appear in these cases

do not amount to a solicitation of business or a stirring up of litigation of the sort condemned by the ethical standards of the legal profession. They comprise in substance public instruction of the colored people as to the extent of their rights, recommendation that appeals be made to the courts for relief, offers of assistance in prosecuting the cases when assistance is asked, and the payment of legal expenses for people unable to defend themselves; and the attorneys who have done the work have done so only when authorized by the plaintiffs. The evidence is uncontradicted that the initial steps which have led to the institution and the prosecution of racial suits in Virginia with the assistance of the Association and the Fund have not been taken until the prospective plaintiffs made application to one or the other of the corporations for help. In our opinion the right of the plaintiff corporations to render this assistance cannot be denied.

The activities of petitioner and its local affiliates seem to be covered by Canon 55 of the Canons of Professional Ethics of the American Bar Association, which relates in part to charitable societies rendering aid to the indigent. It makes a distinction between an organization offering this kind of service and a business corporation.

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

Control of the actions of an attorney by a business corporation might mean that the profit-making purpose

of the corporation would override the duty of the attorney in the ethical exercise of his profession. As was said in *In Re Cooperative Law Co.*, 198 N. Y. 479, 485, 92 N. E 15, 16 (1910):

- The corporation would control the litigation, the money earned would belong to the corporation, and the attorney would be responsible to the corporation only. His master would not be the client but the corporation, conducted it may be wholly by laymen, organized simply to make money and not to aid in the administration of justice which is the highest function of an attorney and counselor at law. The corporation might not have a lawyer among its stockholders, directors, or officers. Its members might be without character, learning or standing. There would be no remedy by attachment or disbarment to protect the public from imposition or fraud, no stimulus to good conduct from the traditions of an ancient and honorable profession, and no guide except the sordid purpose to earn money for the stockholders.

A non-profit corporation, on the other hand, is in an entirely different category. *People ex rel. Hoyne v. Grant*, 208 Ill. App. 235, 245 (1918), makes this point.

Associations not for pecuniary profit, however, are essentially different in their nature; they are organized for the mutual benefit of the members, or for the promotion of the general welfare, or both, and include a multitude of organizations for the advancement of education, science, commerce and industry, and for other beneficent purposes, and, when possessed of a membership of a general character, constitute integrating strands tending to give solidarity to the country in peace and in war.

Thus, associations and corporations not organized for profit cannot be said to control litigation in their own interest. See Weihofen, "Practice of Law by Non-Pecuniary Corporations: A Social Utility," 2 *U. of Chi.*

*L. Rev.* 119 (1934): American Bar Association, Opinions of the Committee on Professional Ethics and Grievances, Opinion 282 (1950), at page 594.

Unquestionably, the concern of the Bench and Bar has not been that a corporation cannot take an oath, nor fulfill any of the usual requirements of admission to the Bar. Legal Aid Societies cannot do these things. The problem has been that a business corporation has an ultimate purpose other than the fair outcome of litigation.

It is conceded that petitioner is not a legal aid society in the true sense, in that it does not investigate the financial status of a prospective litigant, nor does it accept every case. Petitioner's activities fall into the same classification, however, since its only purpose in providing legal assistance is to afford access to the courts for those whose rights to equality have been violated, and to serve the ends of justice in the race relations area.

*Ryan v. Pennsylvania Ry. Co.*, 268 Ill. App. 364, 373 (1932), makes a clear distinction between legal aid and unlawful soliciting which bears quotation in this connection:

After a careful consideration of all the facts we are satisfied that these contentions and arguments are without merit, and we feel impelled to say that the assertion that the Brotherhood, through its legal aid department, is akin to an ambulance chaser and that the petitioner was a beneficiary of an unethical and unlawful system of obtaining clients, is unworthy of the able lawyers that made it. The Brotherhood is a labor organization, composed of men engaged in hazardous occupations and who are banded together for mutual protection and advancement. The evidence established that it organized the legal aid department for the sole purpose of protecting its injured members or their families. . . . The evidence, introduced by the respondent, shows clearly the worthy purpose of



the department and the necessity for its organization and maintenance.

Justification for offering legal assistance is even greater where the questions involved affect equally all the members of a defined group. The American Bar Association, Opinion of the Committee on Professional Ethics and Grievances, Opinion 168 (1937), concluded that it was appropriate for the general counsel of a manufacturer's association to give legal advice to all members of the association on problems common to them all:

It is our view that such opinions where they are applicable to problems common to all members of the association, are not only proper, but that they serve a highly useful purpose. . . . The giving of advice upon subjects affecting the group is a proper function of a lawyer, protecting its members from prosecution, penalty and loss and at the same time interpreting the law and encouraging its due observance

Moreover, courts and the legal profession have repeatedly approved of legal assistance given by public-spirited attorneys and groups. The American Bar Association, op. cit. *supra*, Opinion 148 (1935), states that as to broad legal questions affecting many groups:

The question presented, with its implications, involves problems of political, social and economic character that have long since assumed the proportions of national issues, on one side or the other which multitudes of patriotic citizens have aligned themselves. These issues transcend the range of professional ethics.

See in accord: *In Re Ades, supra*; *Gunnels v. Atlanta Bar Assn., supra*; Note, 3 R. Rel. L. Rep. 1257.

Petitioner's attorneys, as is shown on this record, receive far less compensation in affording professional serv-

ices in civil rights litigation than they ordinarily would receive. While the litigant has the opportunity to obtain fundamental rights, there is no money judgment in which the attorney might share. *Williams v. Page*, 24 Beav. 654, 666, 53 Eng. Rep. 510 515 (1858), early stated the distinction between the suit which is "substantially that of the attorney, and the client can neither gain nor lose by it," and the one where the attorney's purpose is "an earnest desire to redress the wrong suffered by a poor and uninfluential person."

At present the likelihood of a case brought to harass and oppress is very small. Excellent protection against baseless suits is provided by statutes of limitations, statutes of frauds, by court costs being paid by unsuccessful parties and by establishment of the right to recover damages for malicious prosecution. As summarized by Radin, "Maintenance by Champerty," *op. et. supra*, at page 77:

... [A]gainst the group of men who harass their neighbors with improper and unnecessary suits, however lawfully commenced, we may set the meek and economically feeble persons who without support are afraid or incapable of calling in the law to secure their rights. The shoe is really on the other foot. If in medieval England, powerful men oppressed their weaker fellow subjects by maintaining suits against them, in modern society powerful people are more likely to achieve their ends by daring their victims to maintain suits.

It is to give opportunity to a weak and disadvantaged group to establish and assert its fundamental rights that petitioner involves itself in test case litigation. It would seem clear, therefore, that measured by prevailing yardsticks, petitioner's activities cannot be said to amount to barratry. Nor are the attorneys, who use their time, energy and professional skill, with a minimum of financial rewards, to achieve the ends of social justice for Negroes, engaged in unprofessional or unethical conduct as those

terms are generally understood by the Bench and Bar in the United States. On the contrary, not only are petitioner's activities and those of the attorneys associated with it condoned by the legal profession, but they are consistent with its highest traditions.

### III

#### **The Decision Below Contravenes the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.**

The State of Virginia may, of course, regulate the practice of law to insure the highest ethical standards. However, as was pointed out under Part I hereof, petitioner's activities represent no threat in that regard. Since the organization pays the attorneys who act as counsel in the cases in which its assistance is given, petitioner's purpose, obviously, cannot be to solicit employment for a group of attorneys. Petitioner is performing a public service in enabling persons to obtain judicial relief, when they would not otherwise be able to vindicate those constitutional rights that affect them individually and as Negroes.

A pecuniary interest is not the only valid "interest" which parties may have in litigation. The "interest" of the members of the N.A.A.C.P. is personal, not pecuniary. The cases in which the organization has participated has affected not only the particular individuals directly involved as plaintiffs, but also the status of Negroes as a group in the society, as well as the pattern of life of a substantial part of the population of this country. The right of a Negro to be free of invidious distinctions of color and to share equally in the benefits and hazards of American citizenship—which is basically all petitioner seeks to accomplish through the technique of the "test" case—are of equal importance to petitioner's members and to Negroes in general.

The Association is, therefore, no stranger to the litigation which it sponsors. Implicit recognition of this fact can be found in the opinion of this Court in *N.A.A.C.P. v. Alabama*, 357 U. S. 449. There it was stated at page 459:

... [the N.A.A.C.P.] and its members are in every practical sense identical. The Association, which provides in its constitution that "[a]ny person who is in accordance with [its] principles and policies . . ." may become a member, is but the medium through which its individual members seek to make more effective the expression of their own views.

Subsequently, *N.A.A.C.P. v. Harrison*, 360 U. S. 167, 177 makes renewed reference to this concept:

... Further, the "personal right" component of "direct interest" in the statutory definition of "justified" instigation . . . might lend itself to a construction which would embrace non-party Negro contributors to litigation expense, including N.A.A.C.P. because of the relationship of that organization to its members.

A regulation or statute must necessarily violate equal protection, where it condones legal assistance by one concerned with property rights or commercial interest on the one hand, and prohibits such assistance by one concerned with the elimination of racial differentiations on the other. Yet, as construed, the statute would seem to require this result. In addition, under this law solicitation of legal business as incident to a contractually assumed "pecuniary right" (e.g., by liability insurance carriers) is permitted, but solicitation of legal business to protect a non-party Association member's "direct interest" and "personal right" in litigation is forbidden. This is an invidious differential within the meaning of the decisions of this Court. Cf. *Mayflower Farms v. Ten Eyck*, 297 U. S. 266; *Skinner v. Oklahoma*, 316 U. S. 585; *Morey v. Doud*, 354 U. S. 457.

Such a patently arbitrary application of the law can have only one result—viz., the state's being able to marshal all its resources to protect state-imposed segregation, while Negroes, whose constitutional rights are being denied, may no longer utilize the resources offered by petitioner in an attempt to have abstract constitutional rights to equality translated into reality.

It cannot be shown that suppression of petitioner's activities bears any reasonable relation to the end of maintaining the integrity of the judicial process, and the instant statute, therefore, is violative of both due process and equal protection. Cf. *Schwartz v. Board of Bar Examiners*, 353 U. S. 232; *Konigsberg v. State Bar of Calif.*, 353 U. S. 252; *Nebbia v. New York*, 291 U. S. 502; *Skinner v. Oklahoma*, *supra*. This must be so, since discouraging litigation is not an end in itself, especially in a situation where there is no agency except the courts which can be expected to halt a continuing deprivation of constitutional and human rights.

Roscoe Pound, in "Spirit of the Common Law" (1921), traces the origin of this negative attitude towards litigation at pages 134, 135:

In truth, the idea that litigation is to be discouraged, proper enough, insofar as it refers to amicable adjustment of what ought to be adjusted, has its roots chiefly in the obvious futility of litigation under the conditions of procedure which have obtained in the immediate past. It is much more appropriate to frontier and rural communities where a lawsuit was game and a trial a spectacle than to modern urban communities. Moreover, there is danger that in discouraging litigation we encourage wrongdoing, and it requires very little experience in the legal aid societies in any of our cities to teach us that we have been doing that very thing . . . Under the influence of the theory of natural rights and of the actual equality in pioneer society, American common law assumed that there were no classes and that normally men dealt with one another on equal terms and at arm's length, so that courts at the end of the nineteenth century were loth to admit, if they would admit at all, the validity of legislation



which recognized the classes that do in fact exist in our industrial society and the inequality in point of fact that may exist in bargainings between them.

Justice Jackson, in "The Struggle for Judicial Supremacy" (1941), at page 306 emphasizes the significance of raising and settling in the courts questions affecting important rights:

Can we not establish a procedure for determination of substantial constitutional questions at the suit of real parties in interest which will avoid prematurity or advisory opinions on the one hand and also avoid technical doctrines for postponing inevitable decisions? Should we not at least try to lay inevitable constitutional controversies at rest?

These are some of the considerations which render the test case an efficacious and approved method of resolving a controversy in respect to the reach of a guarantee of the fundamental law. See *Eaves v. Dwyer*, supra; *Stark v. Wickard*, supra.

#### IV.

### **The Virginia Statute, In Purpose and Intendment, Constitutes Discriminatory Race Legislation Within the Meaning of the Decisions of This Court.**

This Court has consistently struck down state regulations based upon a racial criterion. See *Fick Wo v. Hopkins*, 118 U. S. 356; *Oyama v. California*, 332 U. S. 633; *Takahashi v. Fish & Game Commission*, 334 U. S. 410; *Sweatt v. Painter*, supra; *McLaurin v. Oklahoma State Regents*, supra; *Brown v. Board of Education*, supra; *Broeder v. Gayle*, 352 U. S. 903, affirming 142 F. Supp. 707 (M. D. Ala. 1956); *State Athletic Commission v. Dorsey*, 359 U. S. 533, affirming 168 F. Supp. 149 (E. D. La. 1958). It is clear, therefore, that regulation of the legal process in order to discriminate against Negroes as a class is foreclosed, and that such legislation can be sustained only if it furthers a valid state interest. The statute in controversy does not meet this test, since in purpose and effect it



aids in the accomplishment of a racial discrimination proscribed by the Constitution. Cf. *Gomillion v. Lightfoot*, 364 U. S. 399.

Many states have statutes which briefly define barratry as the inciting of groundless litigation, with a fine or some other penalty provided.<sup>4</sup> Four others have a more lengthy

---

<sup>4</sup>Alabama: Code of Ala., Tit. 46, §§ 44, 53 (1958) [Acts of 1923, Ch. 260, § 6251; Ch. 79, § 3308] § 44—Unlawful to encourage or solicit litigation; § 53—Encouraging litigation; champerty; misdemeanor.

Arizona: Orig. Rev. St. Anno. § 13-261 (1956) [P. C. 1901, §§ 155, 156] Barratry and Maintenance; definition; penalty.

California: Cal. Penal Code §§ 158, 159 (47 Cal. Code 255, 256) [Penal Code of 1872, §§ 158, 159] § 158—Common barratry defined; punishment; § 159—Common barratry: proof required.

Colorado: Colo. Rev. Stat. Ch. 40, Art. 7, §§ 40, 41 (1935) (40-7-40, 40-7-41) [Acts of 1930, §§ 1874, 1875]; § 40—Barratry—penalty; § 41—Maintenance—penalty—exception ["It shall not be maintenance for a man to maintain the suit of his kinsman or servant or poor neighbor out of charity"].

Delaware: Del. Code Anno., Tit. 11, § 371 (1953) [Code of 1852, § 2893]. Barratry, champerty or maintenance. Whoever is guilty of common barratry, maintenance or champerty, shall be fined not less than \$50 nor more than \$400.

Idaho: Idaho Code Anno. §§ 18-1001, 18-1002 (1948), [Acts of 1887, Title 6, Ch. 7, § 6521]; § 18-1001—Common barratry—["Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months and by fine not exceeding \$500"].

Illinois: Ill. Rev. Stat., ch. 38, §§ 65, 66 (1959) [Act of March, 1874]; § 65—Barratry defined; penalty; § 66—Maintenance defined; penalty [same exception as Col., supra].

Indiana: Ann. Ind. Stat., §§ 10-3108, 10-3110, 10-3111 (Burns 1956); [Acts of 1905, Ch. 169, § 510, p. 584]; § 10-3108—Common barrator; definition; penalty; § 10-3110—Unauthorized solicitation by person not admitted to bar—Prima facie evidence; § 10-3111—Unauthorized solicitation—Penalty.

Iowa: Iowa Code Ann., § 740.6 (1960) [Acts of 1860, § 4300]; stirring up quarrels and suits [intent to injure is element]; criminal and civil penalties prescribed.

Kansas: Kansas Gen. Stat. Ann. § 21-745 (1949) [Rev. Stat. 1923] Common barratry; penalty.

Minnesota: Minn. Stat. Ann. § 613.75 (1947) [§ 8267, Rev. Law 1905] Common barratry; definition; misdemeanor.

definition forbidding solicitation of litigation and repre-

- Montana: Rev. Codes of Montana, § 94-3533 (1947) [§ 8267, Rev. Code 1907] Common barratry defined—how punished.
- Missouri: Mo. Stat. Ann., § 557.470 (Vernon 1953) [R. S. 1825, p. 305, § 75; R. S. 1879, § 1465]; Barratry, how punished.
- Nebraska: Neb. Rev. Stat., § 28-716 (1943) [G. S. p. 762; R. S. 1913, § 8732] Stirring up suits and controversies; penalty.
- Nevada: Nev. Rev. Stat., § 199.320 (1957) [Acts 1911, § 101]; Inducing lawsuit; penalty.
- New York: N. Y. Penal Law, §§ 320-323 (McKinney 1944) [Laws 1881] Penal Code, §§ 132-135); § 320—Common barratry defined; § 321—Barratry a misdemeanor; § 322—Proof required to convict of barratry; § 323—Interest no defense to prosecution for barratry.
- North Dakota: N. D. Century Code Ann., §§ 12-17-16, 12-17-17, 12-17-18 (1960) [Penal Code (1877), §§ 191-194]; § 12-17-16—“Common barratry” defined—Punishment; 12-17-17—Proof required for common barratry; § 12-17-18—Common barratry—Accused party to proceeding not a defense.
- Ohio: Ohio Rev. Code Ann., § 2917.43 (1953) [Gen. Code (1910), § 12847]; Stirring up lawsuits and quarrels; penalty.
- Oklahoma: Okla. Stat. Ann., Tit. 21, §§ 550-553 (1958) [Rev. Laws (1910) §§ 2262-2264]; § 550—Common barratry defined; § 551—Barratry a misdemeanor; § 552—Proof required, barratry; § 553—Interest of accused no defense to barratry prosecution.
- Pennsylvania: Pa. Stat. Ann., Tit. 18, § 4306 (Purdon 1945) [Act 1860, March 31, P. L. 382, § 9, was a reenactment of Act 1700, I Sm. L. 6, which was repealed by Act 1860, March 31, P. L. 427, § 79] Barratry defined; penalty.
- South Dakota: S. Dak. Code, § 13.1252 (1939) (Rev. Code (1919), §§ 3782-3785) Common barratry defined; misdemeanor; proof required; interest no defense.
- Utah: Utah Code Ann., §§ 76-28-43, 76-28-44 (1953) (C. L. 1917), § 8008); 76-28-43 “Common barratry” defined; 76-28-44—Proof required for conviction.
- Vermont: Vermont Stat. Ann., Tit. 13, § 701 (1958) [C. L. (1824) Ch. 32, p. 266] Barratry; penalty.
- Washington: Wash. Rev. Code, § 9.12.010 (9.1.56) [Acts (1909), Ch. 249, § 118]; Barratry defined; penalty.
- Wisconsin: Wisc. Stat. Ann., § 256.295 (West 1957) [Laws, 1927, Ch. 400] § 256.295 Barratry; (1) Soliciting legal business; (2) Solicitation of a retainer for an attorney; (3) Employment by attorney of person to solicit legal matters; (4) Penalty.

sentation in a law suit without a direct interest.<sup>5</sup> In these states, the statutes have been on the books for several decades without substantial amendment. A few other states have statutes specifically directed against the commercialization of the law, forbidding fee-splitting and solicitation of personal injury claims; and forbidding a corporation from representing itself as practicing law and from furnishing attorneys, except corporations organized for benevolent and charitable purposes. These states have no barratry statutes as such.<sup>6</sup>

<sup>5</sup>Maryland: Md. Ann. Code, Art. 27, §§ 13, 14 (1957) [Laws, 1908, Ch. 413; Laws, 1916, Ch. 695] [Barratry; Practice of law by Corporation] § 13—Generally; solicitation prima facie for gain; disciplinary powers of courts not affected; § 14—Corporation or association not to practice law; liability of officers, etc.; exceptions ["... the business of examining and insuring titles to real property, or the collection or adjustment of mercantile claims in which a corporation or voluntary association may be lawfully engaged, nor to any insurance corporation or association defending the insured under a policy of insurance"].

New Mexico: N. Mex. Stat. Ann. §§ 40-26-1, 40-26-2 (1953) (Laws, 1907, Ch. 29, § 1); § 40-26-1—"Barratry" defined; penalty; Disbarment; § 40-26-2—Common barrator; penalty.

Rhode Island: R. I. Gen. Laws Ann. §§ 11-27-8, 11-27-10, 11-27-11, 11-27-14; 11-27-15, 11-27-16, 11-27-17, 11-27-18, 11-27-19 (1956) [P. L. 1935, Ch. 2190, § 1]; § 11-27-8—Solicitation of business by agents prohibited; § 11-27-10—Agreement to furnish legal services prohibited; § 11-27-11—Practices permitted to persons not member of bar; § 11-27-14—Penalties for violation of provisions, supra; § 11-27-15—Practice by corporations and associations prohibited; § 11-27-16—Practices permitted to corporations and associations; § 11-27-17—Penalty for violation by corporation; § 11-27-18—Legal Aid Society of R. I. excepted; § 11-27-19—Enforcement of provisions—duty of atty. gen'l.

Texas: Texas Penal Code Ann. Art. 430 (Vernon 1952) [Acts, 1917, Ch. 133, § 1] Barratry; definition; penalty.

<sup>6</sup>Connecticut: Conn. Stat. Ann., §§ 51-86, 51-87, 51-88 (1960); § 51-86—Soliciting persons to institute actions for damages prohibited; penalty; § 51-87—Solicitation of cases for attor-

After the decision in *Brown v. Board of Education*, *supra*, a majority of the southern states amended their barratry statutes, making them specifically applicable to

neys prohibited; penalty; § 51-88—Practice of law by persons not attorneys prohibited; penalty.

Kentucky: Ky. Rev. Stat., §§ 372.060; 372.090; 372.100, 372.120 (July 1960); 372.060—Champertous contracts and conveyances void; § 372.090—Champertous contract a defense in favor of adverse holder; 372.100—Parties to champertous contract may be required to testify; immunity from prosecution; 372.120—No right of action on champertous contract.

Louisiana: La. Rev. Stat. Ann., Tit. 37, § 213 (West 1951)—Persons entitled to practice law; penalty for unlawful practice [specifically applicable to corporation or voluntary association with exception, as follows: "This section does not prevent any corporation or voluntary association formed for benevolent or charitable purposes and recognized by law, from furnishing an attorney-at-law to give free assistance to persons without means"].

Maine: Maine Rev. Stat. Ch. 135, § 18 (1954) Corrupt agreements by attorneys and others.

Michigan: Mich. Stat. Ann., §§ 27.87-27.93 (1938); § 27.87—Purchase of choses in action for purpose of suit—unlawfulness; § 27.88—Same; penalty—disbarment; § 27.89—Same—lawfulness; § 27.90—Same—notice of defense in suit on chose; § 27.91—Same—examination of plaintiff and attorney; § 27.92—Same—nonsuit; § 27.93—Same—immunity of attorney from criminal prosecution.

Massachusetts: Mass. Ann. Laws, Ch. 220, § 8 (1955) Attorneys, etc., Not to Buy, etc., Demands for Collection.

New Hampshire: N. H. Rev. Stat. Ann. § 311:11 (1955) Practice by Corporations Prohibited.

New Jersey: N. J. Stat. Ann., Tit. 2A, §§ 170-78, 170-79, 170-81, 170-82 (1953); § 170-78—Practice of law limited to licensed attorneys or counselors at law—corp. prohibited; § 170-79—Prohibits representation, solicitation, etc., by corp. or other person not atty; § 170-81—Business and practices excepted; § 170-82—Further exceptions, held to prohibit: ["c. Any organization, either corporate or otherwise, organized for or doing charitable or benevolent work or rendering assistance to persons without means in pursuit of any legal remedy, from carrying out such charitable objects, or from rendering such charitable assistance; or d. Any person or

attorneys connected with an organization such as petitioner's which represents litigants without charge. Among these states are the following:

Arkansas, in 1958, amended Ark. Stat. Ann., §§ 47-701, 41-702 (1947), dealing with barratry, by adding eleven new sections (§§ 41-703 through 41-713, Supp. 1959). While the previous law provided a penalty for one who disturbs the peace and spreads false rumors, the new law makes criminal the commission of an act which tends to breach the peace when the purpose is court action. Also condemned is the seeking out and proposing to another that legal action be instituted against a person, state or legal entity; paying the obligations of a party to such an action; bringing or maintaining suit without a direct and substantial interest in the relief thereby sought; or directly or indirectly giving money or something of value to induce another to commence or prosecute a law suit. A corporation or association found guilty will be ousted from the state, and barratry may be enjoined by any interested person. These statutes seem to be patterned after Virginia's enactments in 1956.

corporation from soliciting the aid, assistance or cooperation of other persons or corporations, similarly situated with regard to pending, proposed, contemplated or threatened litigation"]. North Carolina: N. C. Gen. Stat., § 84-38 (1958) Solicitation of retainer or contract for legal services prohibited; division of fees; misdemeanor.

Oregon: Ore. Rev. Stat., §§ 9.500, 9.510, 9.520, 9.530 (1955); § 9.500—Solicitation of personal injury business by nonlawyer prohibited; § 9.510—Same by lawyer, prohibited; § 9.520—Acceptance and prosecution of solicited claims prohibited; § 9.530—Disbarment for solicitation.

West Virginia: W. Va. Code Ann., § 2854, Practice by corporations or voluntary associations; penalties; limitations of section [not applicable to . . . "organizations organized for benevolent or charitable purposes or for the purpose of assisting persons without means in the pursuit of any civil remedy"].

Wyoming: Wyoming Stat. Ann., §§ 6-195, 6-196 (1957);

§ 6-195—Solicitation of claims for personal injuries prohibited;

§ 6-196—Penalties for violation of preceding section.



Florida had no barratry statute until 1959, when it passed Chapter 59-381, Laws of Florida, 1959, and Chapter 59-391 (Fla. Stat. Ann., §§ 877.01, 877.02, 1960 Supp.). These laws forbid instigation of litigation and solicitation of legal services, with an exception for commercial enterprises and legal aid societies.

Georgia had several statutes forbidding barratry, attorneys soliciting business, and a corporation soliciting business.<sup>7</sup> In 1957, it enacted Acts 1957, pp. 658, 659 (Ga. Code Ann., §§ 26-4703 to 26-705, 1958 Supp.), which forbids a stirring up of a quarrel between an individual and the state, acts breaching the peace intending to lead to a suit, and seeking out and proposing a suit to another.

Mississippi had no statutory prohibition against barratry, but in 1956, it enacted Laws 1956, Ch. 253, §§ 1-8 (Miss. Code 1942 Ann., §§ 2049-01.-2049-08. (1956)), forbidding an association or corporation from giving assistance to induce another to commence a legal action. Commercial enterprises were excepted.

Prior to 1954, South Carolina by statute forbade the solicitation of legal business.<sup>8</sup> In 1957, a new provision was enacted (S. C. Code, §§ 56-147 to 56-147.6 (1952), 1960 Cum. Supp.), making unlawful the inciting of a suit without a substantial interest and with intent to harass or combined with giving payment or anything of value directly or indirectly to another to induce his bringing the law suit. Ouster of a corporation or association and the disbarment of any attorney are provided as penalties for violating this law.

<sup>7</sup> Ga. Code Ann. 9-9901 (from Acts 1895, p. 64); §§ 9-402, 9-405 (from Acts 1931, pp. 191, 192); and § 26-4701 (from P. C. 1933, §§ 330 and 332).

<sup>8</sup> S. C. Code, 56-145 (1952) (from Acts 1946, (44) 2575.



Tennessee, in 1957, amended Tenn. Code Ann., § 3212 (1955) which simply provided a penalty for inciting litigation—the law since 1932. The new amendment forbids instigation of a law suit by someone not related to the plaintiff by blood or marriage, makes unlawful the aiding or abetting of a barrator, allows an injunction against a barrator and excepts commercial transactions and legal aid societies (Tenn. Code Ann., §§ 39-3405 through 39-3410 (1961) Cum. Supp.).

Virginia is the seventh of these southern states to enact or amend its barratry statutes since 1944. The instant statute and §§ 18.1-388 to 18.1-393, Code of 1950 (1960 Supp.), which was the prototype for the Tennessee statute above cited, provide penalties for organizations such as petitioner's aiding others in bringing law suits and subject attorneys in such litigation to disbarment.

As was pointed out in *N.A.A.C.P. v. Patty*, at pages 511-515, these changes in the law did not arise from any valid state concern with the integrity of the judicial process, but were enacted as aids to the state in the accomplishment of its unconstitutional purpose of maintaining racial segregation. The pernicious effect of these laws is to prevent those interested in lawful progress towards desegregation from availing themselves of the services of attorneys which petitioner or any group or association seeking to represent or advance the Negro's interest in this regard might offer. The purpose of these laws was candidly stated in the preamble to the Arkansas statutes which declared that the enactments were designed to prohibit "unnecessary" school litigation. The present statute, petitioner respectfully submits, is in the same category as all other race legislation and, therefore, must fall.

No groups other than those concerned with racial discrimination are at a disadvantage under this legislation. None are prevented from raising sufficient funds to carry on costly litigation. If the object is to safeguard the

administration of justice, discrimination against only those concerned with the invalidity of racial distinctions does not conform to this purpose. Cf. *Morey v. Doud*, *supra*.

Moreover, even in the absence of these considerations, the statute is fatally defective. Since the law endangers petitioner's organizational efforts to remove racial and color distinctions in the United States, it inhibits the effective exercise of rights of freedom of association, protected under the due process clause of the Fourteenth Amendment. See *N.A.A.C.P. v. Alabama*, *supra*. Individual members join the N.A.A.C.P. for mutual protection and for the advancement of a group interest. This right is basic to a democratic society. *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1. Just as a state may not prohibit an individual from asserting his constitutional rights through lawful means, a state may not prohibit this being done in concert with others. *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, 258. Viewed realistically, the decision below denies to petitioner the right to give meaningful assistance to Negroes in their effort to assert and vindicate their constitutional rights. This, petitioner contends, cannot be justified on this record as being reasonably related to any valid legislative objective. Cf. *N.A.A.C.P. v. Alabama*, *supra*.

It is true, of course, that the decision below purportedly leaves petitioner free to underwrite the costs of litigation, as long as the cases it supports are not handled by attorneys associated with the organization. The evil which the statute, as thus construed, was designed to meet, therefore, is that akin to a monopoly or restraint of trade. Violation of the statute under this construction occurs, because only those lawyers on the legal staff of petitioner or its local affiliates handle cases which petitioner finances

as an organization. As was pointed out *ante*, except for the few lawyers who work full time on the petitioner's national office staff, these cases form only a minor part of any attorney's normal practice, and the record clearly shows that the lawyer's financial gain is small indeed. There is no evidence that any interested lawyer cannot become associated with the organization. There is, moreover, no testimony that any person represented through petitioner's resources desired other counsel. As a matter of fact, it is state officials alone who complain—and these officials, it might be added, are invariably stalwart defenders of racial segregation.

Pursuant to decision below, petitioner can no longer utilize the expertise developed over the years by attorneys who have gained experience in civil rights litigation, in active association in petitioner's effort to eradicate racial discrimination. If petitioner can underwrite litigation in which other lawyers act as counsel, the decision, at best, seems to require an inefficient use of the organization's financial resources—and would bar from race discrimination cases those lawyers who appear equipped to do the best job. This hurtful result, rather than insuring high ethical standards, merely hampers effective advocacy.

In *Crandall v. Nevada*, 6 Wall. 36, 44, this Court said of the citizens of the United States: "... he has a right to free access ... to the court of justice in the several states, and this right is in its nature independent of the will of any state. ..." See also, *Terral v. Burke Construction Co.*, 237 U. S. 529; *United States v. Lancaster*, 44 Fed. 885 (W. D. Ga. 1890); *Truax v. Corrigan*, 257 U. S. 312, 334; *Barbier v. Connolly*, 113 U. S. 27, 21; *Slaughter Houses Cases*, 16 Wall. 36. Petitioner is now engaged in assisting Virginia Negroes to remove racial discrimination in public elementary and secondary schools and in other public facilities. If the decision on review here is affirmed, indi-

vidual Negroes must look to their own resources to finance litigation to achieve this objective, even though the individual litigant might benefit less by a favorable decision than the group as a whole.<sup>9</sup> This places Negroes as a class in Virginia at a further disadvantage.

In the development of the law, opportunities for litigants to obtain needed assistance in the presentation and prosecution of their claims in the courts have expanded.<sup>10</sup> The rules of procedure have been liberalized generally, and specifically in the field of group-sponsored litigation—for example, rules permitting class actions, intervention and permissive joinder. This trend towards greater availability of the court process to the rank and file citizen is regarded as a wholesome one, and one which should be accelerated. The decision below is against this liberalizing trend, which has been regarded as an aid to the effective administration of justice. It rests on a dubious rationale and since, in result, it would merely aid the state in the effort to insulate its discriminatory practices from court scrutiny, it cannot be squared with accepted notions of due process.

### Conclusion

Group sponsorship of litigation has long been a commonplace (Petition, pp. 17-18), and in the past several decades, it has been utilized with telling effectiveness in the effort to establish and vindicate the Negro's claim to equal citizenship status in the United States. It cannot be possible in a democratic society for group effort, by which great constitutional issue which affect the lives,

<sup>9</sup> This is especially true in school desegregation litigation. Often the plaintiffs who initiate the litigation do not benefit by elimination of desegregation which ensues.

<sup>10</sup> See Smith, H. R. "Justice and the Poor", 3rd Ed. (1924); Brownell, Legal Aid in the United States (1951).

hopes and aspirations of a disadvantaged citizenry are brought to the courts for resolution, to be condemned as subverting the judicial process, or as posing a threat to the integrity of the Bar. Such activities do not constitute barratry. On the contrary, petitioner submits, organizational activities of this character constitute public service on the highest level.

**Wherefore, it is respectfully submitted, the decision below should be reversed.**

ROBERT L. CARTER,  
20 West 40th Street,  
New York 18, New York,  
*Attorney for Petitioner.*

FRANK D. REEVES,  
MARIA L. MARCUS,  
*of Counsel.*

SUPREME COURT, U. S.

Office-Supreme Court, U.S.

FILED

OCT 21 1961

JAMES R. BROWNING, CLERK

In the

**Supreme Court of the United States**

October Term, 1961 2

No. 5

NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC.,

*Petitioner*

v.

FREDERICK T. GRAY, ATTORNEY GENERAL  
OF VIRGINIA, ET ALS.,

*Respondents*

**BRIEF AND APPENDIX ON BEHALF  
OF RESPONDENTS**

DAVID J. MAYS

HENRY T. WICKHAM

*Counsel for Respondents*

TUCKER, MAYS, MOORE & REED  
1407 State-Planters Bank Bldg.  
Richmond, Virginia



## TABLE OF CONTENTS

PRELIMINARY STATEMENT .....	1
STATEMENT OF THE FACTS .....	1
THE QUESTIONS PRESENTED .....	13
SUMMARY OF ARGUMENT .....	14
CHAPTER 33 AND THE FOURTEENTH AMENDMENT .....	14
CONCLUSION .....	26
CERTIFICATE OF SERVICE .....	27

## APPENDIX:

1. Summary of some of the Testimony of Plaintiffs in School Segregation Cases .....	App. 1
--	--------

## TABLE OF CITATIONS

## Cases

Atchison; Topeka & Santa Fe Railway v. Jackson, 235 F. 2d 390 .....	25
Campbell v. Third District Committee, 179 Va. 242 .....	25
Doughty v. Grills, 260 S.W. (2d) 379 .....	24
Gunnels v. Atlantic Bar Association, 12 S.E. (2d) 602 .....	21
Hildebrand v. State Bar of California, 225 P. (2d) 508 .....	25
In Re Brotherhood of Railroad Trainmen, 131 Ill. (2d) 391 .....	25
McCloskey v. Tobin, 252 U. S. 107 (1927) .....	14, 25
People ex rel Chicago Bar Assn. v. Chicago Motor Club, 362 Ill. 50, 199 N.E. 1 (1935) .....	23

	<i>Page</i>
People ex rel Courtney v. Assn. of Real Estate Taxpayers, 4 Ill. 102, 187 N.E. 823 .....	24
Re Maclub of America, Inc. (Mass.) 3 N.E. 2d 272 .....	22
Richmond Ass'n. of Credit Men v. Bar Association, 167 Va. 327 .....	17, 18; 25
Schware v. Board of Bar Examiners .....	14, 25

### **Statutes**

Acts of the General Assembly of Virginia, 1932:	
Chapter 129 .....	16
Chapter 284 .....	16
Acts of the General Assembly of Virginia, Extra Session, 1956:	
Chapter 33 .....	14, 16, 26
Code of Virginia, 1849 .....	15
Code of Virginia, 1887 .....	15
Code of Virginia, 1919 .....	15
Code of Virginia, 1950:	
Section 54-42 .....	17
Section 54-44 .....	17
Section 54-74 .....	14, 15, 16, 17, 26
Section 54-78 .....	14, 15, 16, 17, 25, 26
Section 54-79 .....	15, 17
Section 54-82 .....	16

### **Other Authorities**

Canons of Professional Ethics (171 Va.) :	
Canon 35 .....	20
Canon 47 .....	17
Definition of the Practice of Law, 171 Va. XVII .....	17

Virginia State Bar:

Ninth Annual Report, p. 32 .....	20
Ninth Annual Report, p. 37 .....	19
Ninth Annual Report, p. 39 .....	19
Fifteenth Annual Report, p. 34 .....	20; 21
Sixteenth Annual Report, p. 30 .....	
Seventeenth Annual Report, p. 32 .....	19

In the  
**Supreme Court of the United States**

October Term, 1961

---

No. 44

---

NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC.,

*Petitioner*

v.

FREDERICK T. GRAY, ATTORNEY GENERAL  
OF VIRGINIA, ET ALS.,

*Respondents*

---

**BRIEF ON BEHALF OF RESPONDENTS**

---

**PRELIMINARY STATEMENT**

Since the petitioner has failed to fully set forth the facts before the court below, and apparently feels that very little evidence of substance may be found in the record made in the state trial court, respondents are compelled to set forth the facts in some detail.

**STATEMENT OF FACTS**

The NAACP does not ask a person if he wishes to challenge a law. However, it does say publicly that it believes that a certain law is invalid and should be challenged in the courts. Negroes are urged to challenge such laws and if

one steps forward, the NAACP agrees to assist (R. 295).

Although it is not in the regular course of business, prepared papers have been submitted at NAACP meetings authorizing someone to act in bringing lawsuits and the people in attendance have been urged to sign (R. 296).

Robert L. Carter, General Counsel for the NAACP, is paid to handle legal affairs for the corporation. Representation of the various Virginia plaintiffs falls within his duties. The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities" (R. 320).

The Virginia State Conference of the NAACP has a legal staff composed of fifteen members and in every instance except two the plaintiffs have been represented by members of such staff in cases in which assistance is given (R. 57).

All prospective plaintiffs are referred to the Chairman of the Legal Staff, Oliver W. Hill, and counsel for such plaintiffs makes his appearance when Hill has recommended that they have a "legitimate situation that the NAACP should be interested in" (R. 268).

W. Lester Banks, as Executive Secretary of the Virginia State Conference of the NAACP, speaks at meetings and urges citizens to look for discriminatory conditions, as do other representatives of the Conference. Individuals also are urged to assert their constitutional rights (R. 28, 34).

The chairman of the legal staff (Hill) approves every item of expense and all legal fees paid by the Conference. The president of the Conference approves the legal fees and expenses of Chairman Hill. Further, in every instance, the president has approved the recommendations of the chairman (R. 49).

The legal staff became an official committee of the State Conference in 1945 or 1946 (R. 58). Its members are elected at the annual convention of the State Conference.

after being nominated by a nominating committee which, in turn, gets its recommendations for candidates from the legal staff (R. 59). The legal committee, in a sense, perpetuates itself in this manner since there has never been additional nominations from the floor of the Convention (R. 60).

Lawyers who wish to become members of the legal committee of the State Conference may request the president of his local branch to recommend him to the committee or he may be recommended by a member of the legal committee (R. 60).

Without exception, when a member of the legal committee brings a lawsuit in his community he requests other members of the committee to be associated with him (R. 62).

The State Conference pays the expenses and fees of its lawyer for each case with the exception of the fees of Robinson<sup>1</sup> (R. 64).

Since there was some question of whether the provisions of Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, would prohibit the payment of expenses and fees by the State Conference some of the litigants in the various school segregation cases were informed that they might have to pay the costs of the NAACP lawyers (R. 65). However, since July, 1956, the State Conference has paid to members of its legal committee for services and expenses incurred in school litigation the sum of \$12,378.61 (Defs. Exh. D-3, R. 180, 225). Further, Banks stated that he expects the State Conference to receive more outstanding bills for services rendered by Hill (R. 180).

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP requesting Hill to speak with certain parents

---

<sup>1</sup> Spottswood W. Robinson, III, who was regional counsel for the NAACP Legal Defense Fund and on an annual retainer.



of school children residing in Charlottesville (R. 65). The parents then signed papers, some of which authorized Hill to represent such parents and their children. Other authorization forms passed out at the meeting were signed with no attorney's name appearing. Hill filled in his name as attorney on these after he returned to his office in Richmond (R. 66).

Authorization forms for use in all the school segregation cases were prepared by Hill for his use and the use of other lawyers on the legal committee of the State Conference (R. 66). The form was so written as to authorize a particular attorney to associate such other attorneys as he saw fit (R. 66).

In the Charlottesville case Hill first associated Robinson, Martin, Ely and Tucker, the first three being from Richmond and Tucker residing in Emporia, Virginia (R. 67). The General Counsel for the NAACP also came down from New York for the trial of the Charlottesville case (R. 67).

Upon examination, Hill conceded that the State Conference could have done without the services of Tucker but "it was felt that it would be advisable and helpful if as many as possible of the lawyers who were in a particular community had some participation in the [school segregation] cases". The idea was to train lawyers for future school segregation cases (R. 68).

The authorization form used by the litigants in the Prince Edward case authorized the firm of Hill, Martin and Robinson as attorneys. It did not authorize the association of other attorneys (R. 77). However, Hill testified that the General Counsel of the NAACP was associated because:

"We don't regard the prosecution of a person's constitutional rights with the same strictness that you would regard, say, handling a contract litigation for

a particular individual client. This is something that the NAACP was sponsoring. These people are actively connected with the NAACP and known to be, and these people whose rights we are trying to protect and assert are interested in getting the vindication of their rights, and they are not as much concerned about the particular lawyers in the majority of instances—as to the number of lawyers, put it that way—as a client would be who was involved in particular single piece of private litigation.” (R. 78)

Hill stated that it was well understood in civil rights cases that members of the NAACP and Negroes are entitled to representation by attorneys on the legal committee of the State Conference without cost to them. Negroes were informed of this by Hill and others in the press, in conventions and in meetings of local branches (R. 70, 78, 79).

Hill also testified that it was generally expected that the State Conference would “sponsor” cases as long as the litigants adhere to the principles and policies of the Conference, namely, that a school case must be tried as a direct attack on segregation (R. 69, 70).

S. W. Tucker of Emporia, a member of the legal committee of the State Conference, stated that his duties were “to do whatever was necessary to advance our program. That would entail a study of cases, preparation of cases, trial of cases” (R. 197). He was never employed or compensated by the State Conference prior to his membership on the legal committee (R. 198). He entered Charlottesville and Warren County school segregation cases at the suggestion of Hill and his relationship with Chairman Hill “has been so pleasant and so profitable” (R. 204). Tucker further stated that he handled cases all over the state for the Conference and received a per diem of \$60.00 for his services (R. 204, 206).

The respondents introduced certain exhibits to show the policies of the NAACP, the State Conference and its branches, as well as the activities carried on pursuant thereto. For example, exhibit D-10 is a copy of a letter written by the Chairman of the Legal Committee, Oliver W. Hill, to W. Lester Banks, Executive Secretary of the Virginia State Conference concerning the feasibility of NAACP participation in a labor suit involving the State as the plaintiff and Robert Edwards and Willie Savage as defendants. The attorney for the defendants requested financial aid. Hill stated that it was contrary to the policy of the State Conference to grant financial aid in cases not handled by the NAACP (Defs.' Exh. D-10, R. 210, 247, 248).

Exhibit D-4 is a copy of a letter written by the Executive Secretary of the State Conference dated July 1, 1953, wherein he stated that the NAACP was not a legal aid society. It rendered aid in criminal cases only when innocent Negroes had been charged with a crime solely because of race or color, or had been convicted of a crime when denied a proper jury trial, when a confession had been extorted through use of force, or when the accused had been denied the effective use of counsel. Banks testified that the statements contained in this exhibit still correctly state the policy of the Virginia State Conference (Defs.' Exh. D-4, R. 188, 187, 227).

Defendants' exhibits D-7 and D-9 show that all members of the NAACP and their attorneys cannot participate in any lawsuit which seeks to secure separate but equal facilities (Defs.' Exh. 7 & 9, R. 208, 209, 238, 244). The contents of exhibit D-9, being a letter from Spottswood W. Robinson, III, to Reverend N. W. McNair, reads as follows:

"This is with reference to the matter, recently discussed with me, of participation by this office drafting

a reply to a letter received by your group by the County School Board of Amelia County.

"Upon our conference you advised that the effort of your group is to obtain consolidation of Negro elementary schools in said county, and that the effort is limited to this objective.

"As you were then advised, it is not possible either for this office or the NAACP to lend assistance in connection with this effort. In June, 1950, the Association adopted a policy requiring that all education cases seek facilities and opportunities on a racially nonsegregated basis. This policy is binding upon all Association attorneys, and it is apparent that the plans of your group do not conform to this policy.

"At your request, Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, NAACP, was contacted, and he is arranging to visit your group at an early date to more fully explain the Association's policy and its recommendation as to educational matters in your county." (R. 244, 245)

Respondents' exhibit D-5 likewise states the policy of the Virginia State Conference which is to eliminate racial segregation in public schools rather than seek separate but equal facilities (Defs.' Exh. 5, R. 208, 228).

Part of the respondents' exhibit D-1 is a letter dated May 20, 1954, from the Executive Secretary of the Virginia State Conference to all of its members calling for a meeting to be held in Richmond on June 6, 1954, to "develop techniques to put into immediate effect the NAACP's Atlanta Declaration." Banks also stated in this letter: " \* \* \* No conferences, petitions or other negotiations should be engaged in by NAACP or other responsible leaders with local school officials until after the June 6 meeting" (Defs.' Exh. D-1, R. 19, 214, 215).

Another letter from the Executive Secretary to the local

branches, dated June 16, 1954, dealt with petitions to local school boards and requested the local branches to withhold their proceedings with respect to desegregation until completion of the organization of the State Conference's program. However, forms of petitions prepared by NAACP legal department in New York in collaboration with the attorneys on the legal committee of the State Conference were forwarded to the various local branches directly from New York. (R. 216)

The last part of exhibit D-1 is styled a "confidential directive", dated June 30, 1955, to the local branches and signed by the Executive Secretary of the Virginia State Conference which dealt with the method of processing petitions. It reads in part as follows:

"(1). For your convenience we are enclosing four petitions (2 to the Secretary, and 2 to the President). Upon receipt of the petitions, the Chairman of your Education Committee or another responsible branch official will fill in the appropriate spaces designating (a) County or city, (b) name of School Board, and (c) name of your Division Superintendent. *Do not* fill in the last two lines at the bottom of petition.

"(2). Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of *parents or guardians* only. Each petition has an attached sheet for the signatures of 35 names and addresses. If a petition bearer needs additional space, provide one or more of the extra sheets being sent under separate cover.

"(3). Petitions are to be signed by *parents or guardians* themselves, and if they cannot write someone can sign for them letting them make an (X) mark, but be sure to have a witness to this fact.

"(4). In event a petitioner's handwriting is not *readable*, the bearer of the petition should—in a tactful man-

ner—secure the name and address of the petitioner and attach it to the petition (example: line 15 reads: Mrs. Lucy Wright, Route 1, Box 295, Oldtown, Virginia).

"(5). Signatures should be secured from parents or guardians in all sections of the county or city. Special attention should be given to persons living in *mixed neighborhoods, or near formerly white schools.*

"(6). The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way.

"(7). Set an early deadline when petitions will be returned to your Education Committee's Chairman. The quicker they are returned, the sooner your petition can be filed.

"(8). The Education Committee's Chairman will *forward completed petitions to the Executive Secretary of the State Conference.* The Chairman of the Education Committee, or other responsible branch officials will furnish the State Secretary, at the time of transmittal of petitions, the name and location of *meeting site.*

"(9). Immediately upon receipt of petitions by the State Secretary, he will notify all the petitioners and branch officials that an emergency meeting will be held at the meeting site designated by the branch official.

"(10). At that meeting, everyone will be advised as to the next steps. It is absolutely necessary that all of the petitioners be present at this meeting." (R. 218, 219)

The directions quoted above were established and adopted by an emergency southwide NAACP conference held in June, 1955, as shown by the respondents' exhibit D-8. It reads in part as follows:



"\* \* \* It is the job of our branches to see to it that each school board begins to deal with the problem of providing non-discriminatory education. To that end we suggest that each of our branches take the following steps:

"1. File at once a petition with each school board, calling attention to the May 31 decision, requesting that the school board act in accordance with that decision and offering the services of the branch to help the board in solving this problem.

"2. Follow up the petition with periodic inquiries of the board seeking to determine what steps it is making to comply with the Supreme Court decision.

"3. All during June, July, August and September, and thereafter, through meetings, forums, debates, conferences, etc., use every opportunity to explain what the May 31 decision means, and be sure to emphasize that the ultimate determination as to the length of time it will take for desegregation to become a fact in the community is not in the hands of politicians or the school board officials but in the hands of the federal courts.

"4. *Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.*

"5. Seek the support of individuals and community groups, particularly in the white community, through churches, labor organizations, civic organizations and personal contact.

"6. When announcement is made of the plans adopted by your school board, get the exact text of the school board's pronouncements and notify the State Conference and the National Office at once so that you will have the benefit of their views as to whether the plan is one which will provide for effective desegregation. It is very important that branches not proceed at this

stage without consultation with State offices and the National office.

"7. If no plans are announced or no steps towards desegregation taken by the time school begins this fall, 1955, the time for a law suit has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.

"8. At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court." (Emphasis added) (Deis. Exh. D-8, R. 209, 242, 243)

A memorandum written by Banks and introduced and marked as respondents' exhibit D-2 shows that the NAACP and the Virginia State Conference have continued the policies and activities outlined above. It reads in part as follows:

#### "IV. Up to Date Picture of Action by NAACP Branches Since May 31.

##### "A. Petitions filed and replies

A total of 55 branches have circulated petitions.

##### "B. Where suits are contemplated

Petitions have been filed in seven (7) counties, cities. Graduated negative response received in all cases.

##### "C. Readiness of lawyers for legal action in certain areas

Selection of suit sites reserved for legal staff.  
State legal staff ready for action in selected areas.

"D. Do branches want legal action

The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the national and state Conference offices. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education." (Defs. Exh. D-12, R. 93, 182, 224)

Banks explained that the language, "Where suits are contemplated" referred to places where petitions had been denied by local school boards (R. 183). The language "Readiness of lawyers for legal action in certain areas" meant financial aid was available (P. 184). Finally, the language "Selection of suit sites reserved for legal staff" meant that members of the legal committee of the State Conference would pick the places where lawsuits would be brought (R. 184).

Barbara S. Marx, one of the plaintiffs in the Arlington school segregation case, testified that she was vice president of the local branch of the NAACP in Arlington County. Before the commencement of the Arlington case she signed a petition which was received by the local branch directly through the mail from the State Conference in Richmond (R. 134). The petition was then discussed in a branch meeting and she helped circulate it. Mrs. Marx also talked with Hill and Robinson about whether legal action would follow the refusal of the petition by the school board (R. 134). She also stated that she knew that Hill and Robinson would be the lawyers when the time came to file the Arlington school segregation suit (R. 135).

Twenty litigants in the school cases testified in the trial court concerning their yearly family income and such in-

come ranged from a low of \$3,500 to an estimated high of \$19,000. See Appendix I. Thus, of twenty litigants examined, the yearly family income averaged approximately \$7,000 for each.

Ten litigants were examined concerning the value of real property owned by them. These estimates ranged from a low of \$12,000 to a high of \$87,000. See Appendix I. The average of the value of real estate thus held approximates \$35,000 for each litigant.

The statement of the facts set forth above is the evidence material to the consideration of the questions presented and will be summarized and discussed where necessary in the respondents' argument.

As to the petitioner's statement of facts, it should be pointed out that the contributions and aid toward the prosecution of lawsuits are largely in the form of furnishing attorneys who are members of the legal committee of the Virginia State Conference. The record shows that the only financial aid furnished is the payment of court costs and other such expenses of litigation.

The NAACP representatives and officers publicly urge Negroes to assert their constitutional rights so it cannot be stated that the Association does not act until some individual comes to it for help (Deis. Exh. D-8, R. 209, 242).

The statement that the Association does not direct or control litigation is also false. The NAACP has absolute direction and control (Deis. Exh. D-7, D-9, R. 208, 209, 238, 244).

## THE QUESTIONS PRESENTED

1. Do licensed attorneys associated with the petitioner have the right to solicit employment in violation of the Rules of Ethics promulgated by the Supreme Court of Appeals of

Virginia and prohibited by Section 54-74 of the Code of Virginia, 1950, as amended?

2. Does the petitioner have the constitutional right to "run" and "cap" in violation of Section 54-78 of the Code of Virginia, 1950, as amended?

## SUMMARY OF ARGUMENT

1. It is clear that a state, in the exercise of its police power, has the right to regulate the practice of law and revoke or suspend the license of an attorney for unprofessional conduct. *Schwartz v. Board of Bar Examiners*, 353 U. S. 232 (1957).

2. It is likewise clear that a state legislature may enact a statute which forbids laymen and corporations to solicit employment for licensed attorneys. *McCloskey v. Tobin*, 252 U. S. 107 (1920).

## ARGUMENT

### Chapter 33 and the Fourteenth Amendment

Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, amended and re-enacted Sections 54-74, 54-78 and 54-79 of the Code of Virginia, 1950.

The amendment to Section 54-74, which is a part of Title 54, Professions and Occupations, Chapter 4, Attorneys at Law, Article 6, Revocation or Suspension of Licenses: Disbarment Proceedings, Sections 54-72-54-77, inclusive, of the Code of Virginia, provides that malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct shall be construed to include the acceptance of employment from any person, partnership, corporation, organization or corporation with knowledge that such per-

son, etc., has violated Sections 54-78 to 54-83, inclusive, of the Code of Virginia.

The amendment to Section 54-78, which is found in Article 7, Chapter 4 of Title 54 of the Code of Virginia, dealing with runners and cappers, broadens the definition of a "runner" or "capper" to include any person, association, or corporation acting as an agent for another person, association or corporation who or which employs an attorney in connection with any judicial proceeding in which such person, association or corporation is not a party and has no pecuniary right or liability therein.

Section 54-79, which makes it unlawful to act as a "runner" or "capper", was merely amended to conform to the amendment made to Section 54-78.

What may be termed the "modern" procedure for the suspension or revocation of an attorney's license, now found as Section 54-74 of the Code of Virginia, 1950, was first found in the Code of Virginia, 1849, Chapter 164, Section 6, p. 635. There, it was provided that the Supreme Court of Appeals of Virginia could suspend or revoke a license for "mal-practice". This provision was carried into the Code of 1887 without significant change. See, Code of Virginia, 1887, Section 3196. In the Code of 1919, after the word, "malpractice", there was added the phrase, "or any corrupt or unprofessional conduct". See, Code of Virginia, 1919, Section 3424.

In 1932, the legislature of Virginia amended Section 3424, Code of 1919, by making unlawful or dishonest conduct grounds for suspension or revocation of a license as well as malpractice or any corrupt or unprofessional conduct. The legislature also provided at that time that malpractice, etc., shall be construed to include "the improper solicitation of any legal or professional business or employment, either



directly or indirectly". See, Acts of Assembly of Virginia, 1932, Chapter 129, p. 138. The 1932 amendment was carried into the Code of Virginia, 1950, as Section 54-74.

As already pointed out, Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, amended Section 54-74 merely to provide that malpractice, etc., shall also be construed to include the acceptance by an attorney of a case, or money for the prosecution thereof, which is forwarded by anyone whom he knows obtained the case in violation of Sections 54-78-54-83.1, inclusive, of the Code of Virginia. Therefore, Section 54-74, either as it appeared in 1849 or as it now appears, is not applicable to the petitioner or any other corporation. Its provisions apply only to licensed attorneys. Furthermore, the 1956 amendment does nothing more than codify the law as it existed prior to 1956. Certainly, it was and is unprofessional conduct for an attorney to aid and abet a "runner" or "capper". It follows then that the activities of certain attorneys of the NAACP are prohibited by Section 54-74 of the Code of Virginia, 1950, regardless of the validity of Chapter 33.

Section 54-78 of the Code of Virginia was enacted by the legislature in 1932. See, Acts of Assembly of Virginia, 1932, Chapter 284, p. 512. The act, defining a "runner" or "capper", applies to laymen as opposed to licensed attorneys and it is provided that anyone violating any of its provisions shall be guilty of a misdemeanor. See, Section 54-82 of the Code of Virginia, 1950.

Prior to the 1956 amendment, a "runner" or "capper" was defined to be:

"any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this state in the solicitation or procurement of business for such attorney at law,

\*\*\* (See, § 54-78, Vol. 7, Code of Virginia, 1950)<sup>2</sup>

Likewise, it is the contention of the respondents that the activities of the NAACP are prohibited by Section 54-78 of the Code of Virginia as it existed prior to the 1956 amendment found in Chapter 33.

First of all, a corporation cannot practice law and it is a misdemeanor to do so without authority. Sections 54-42 and 54-44, Code of Virginia, and *Richmond Ass'n of Credit Men v. Bar Association*, 167 Va. 327 (1937).

In its definition of the practice of law, the Supreme Court of Appeals of Virginia has said:

"The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is none the less practicing law though such person may employ others to whom may be committed the actual performance of such duties." (171 Va. xvii)

The NAACP employs a general counsel, Robert L. Carter, and one of his duties has been to represent the various plaintiffs in the school segregation cases. The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities."

The State Conference, which is the "arm" of the NAACP in Virginia, has a legal staff of fifteen lawyers, and all prospective plaintiffs are referred to the chairman thereof to determine whether they have "a legitimate situation that the NAACP should be interested in." If they do, a member of the legal staff will represent them in court and will be paid by the State Conference.

<sup>2</sup> The 1958 Replacement Volume, Vol. 7, Code of Virginia, 1950, contains the 1956 amendments to Section 54-78 as well as to Sections 54-74 and 54-79.

The activities of the petitioner are prohibited by *Richmond Ass'n. of Credit Men v. Bar Association*, *supra*. There, the credit association undertook to effect collections of business accounts first by personal calls or letter and then by employment of an attorney selected by it. The fees of such lawyer were fixed by the association and it held itself out to be in the business of collecting liquidated, commercial accounts. Furthermore, the association solicited claims both from its own members and others. In the letter employing the lawyer, the association purported to act "as agent for the creditor." It was held to be engaged in the unauthorized practice of law.

The clients or complainants usually come directly to the State Conference at which time they are referred to a member of the legal staff of the State Conference who serves in that capacity without compensation. Under such circumstances the following language found in the *Richmond Ass'n. of Credit Men* case is pertinent:

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation, and not to the directions of the client." *Re Co-Operative Law Co.*, 198 N. Y. 479, 92 N. E. 15, 16, 32 L. R. A. (N. S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879." (167 Va. at p. 335)

Subsequent to the *Richmond Ass'n. of Credit Men* case, a credit association changed its method of procedure by permitting the creditor to select and employ the attorney. However, the attorney was to advise the association of the

progress with regard to the collection. It was held by the Committee of the Virginia State Bar on Unauthorized Practice of Law that the procedure of the attorney reporting to a lay agency acting as an intermediary amount to the unlawful practice of law. Ninth Annual Report of the Virginia State Bar, p. 37. See, also, Opinion dealing with corporate real estate rental agent in Seventeenth Annual Report of the Virginia State Bar, p. 32.

In the Ninth Annual Report of the Virginia State Bar, p. 39, the Committee on Unauthorized Practice also rendered an opinion which is pertinent to consider. The facts were that a union retained an attorney on a salary basis to represent all of its individual members in their claims for compensation before the State Industrial Commission. He received no fees from the individuals for such representation, his sole compensation coming from the salary paid him by the union. The Committee held that the union was a lay agency practicing law without a license; that it was selling the services of a lawyer and intervening between him and his clients; and that the attorney was in violation of the Canons of Ethics.

At this time, it is also important to note that Canon 47 of the Canons of Professional Ethics, adopted and promulgated by the court below, reads as follows:

"Aiding the Unauthorized Practice of Law. — No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." (171 Va. xxxv)

Evidence was produced to show that some of the plaintiffs in the school segregation cases had no personal relation with the attorneys for the NAACP. Furthermore, the attor-

neys submitted their bills to the State Conference and not to their so-called clients. It should also be again pointed out that neither the NAACP nor its State Conference makes any investigation as to the financial condition of the individual plaintiffs.

Canon 35 reads in part:

"Intermediaries.—The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries." (174 Va. xxxii)

The Committee on Legal Ethics of the Virginia State Bar has had the occasion to render opinions under the Canons of Professional Ethics and Opinion No. 10 dealt with a corporation which desired to employ an attorney to consult with its employees as to their personal legal problems. The corporation's interest was to prevent time lost from work and the duties of the attorney were to handle only simple legal problems. In more complex cases, such as lawsuits, the employees would be advised by the attorney to consult an attorney of their own choosing. The corporation's attorney would, however, represent the employee if requested, charging a reasonable fee to be paid by the employee. The Committee held that the acceptance of such employment by the attorney would be unethical. Ninth Annual Report of the Virginia State Bar, p. 32. See, also, Fifteenth Annual Report of the Virginia State Bar, p. 34, Opinion No. 41

dealing with a printing firm offering the services of an attorney to prepare briefs.

Opinion No. 43 involved an attorney who was to be employed by a hospital and furnished with an office therein. He was to collect accounts and advise patients on hospital insurance policies held by them. The Committee ruled that it would be improper for the said attorney to represent patients of the hospital in personal injury claims. Fifteenth Annual Report of the Virginia State Bar, p. 34.

In Opinion No. 45 a Virginia attorney wished to form a corporation to sell insurance policies to persons to furnish them legal services up to a limited amount of fees, the insured to choose his own attorney. The Committee held that it would be improper to insure reimbursement for a plaintiff's attorney fees because to do so would incite, encourage and promote litigation. Sixteenth Annual Report of the Virginia State Bar, p. 30.

The petitioner seems to feel that since it is a nonprofit corporation, the purpose of which is to bring "test" cases under the Fourteenth Amendment, it does not have to comply with laws, which are concededly applicable to other corporations or persons. Typical of the cases cited is *Gunnels v. Atlanta Bar Association*, 191 Ga. 366, 12 S. E. (2d) 602. There, the attorneys did not receive compensation for their services and the Bar Association did not stand between counsel and client or exercise control over the litigation. The usual and proper relationship of attorney and client existed in that case which does not exist under the evidence before this Court.

The NAACP concedes that it is not a legal aid society and that no investigation is made as to the financial status of a prospective litigant. Its activities and policies may be summarized as follows:



- 1) No aid is granted in lawsuits not handled by it (Defts.' exh. D-10, R. 247);
- 2) It does not render aid to Negroes merely because they may be indigent (Defts.' exh. D-4, R. 227);
- 3) It will not render aid to Negroes merely seeking separate but equal facilities (Defts.' exhs. D-5 and D-9, R. 228, 244);
- 4) It will furnish aid only when its own lawyers handle the case (Defts.' exh. D-10, R. 247);
- 5) It directs and controls the litigation and thus stands between the client and attorney (Defts.' exhs. D-7 and D-9, R. 238, 246); and
- 6) It solicits business (Defts.' exhs. D-2 and D-8, R. 220, 241).

Courts in other jurisdictions have condemned activities similar to the activities of the NAACP.

In the case of *Re Maclub of America, Inc.* (Mass.), 3 N. E. 2d 272 (1936), the court found that an automobile association had been formed for the purpose of furnishing its members with lists of attorneys who would perform services for such members free of charge. The attorneys would look to the association for payment. The association knew nothing of the particular cases and took no part in the direction or control of them. Furthermore, it had no salaried attorneys of its own.

Under the above set of facts, the Massachusetts court held the association to be engaged in the illegal practice of law. The court found:

- 1) Relationship of attorney and client did not exist between the association's member and the attorney;

- 2) The particular attorney was compensated by the association and subject to its instructions;
- 3) The association possessed the right to hire and fire; and
- 4) The practice was considered a contract to furnish legal assistance rather than a contract to pay for legal assistance.

The case of *People ex rel Chicago Bar Association v. Chicago Motor Club*, 362 Ill. 50, 199 N. E. 1 (1935), involved a nonprofit corporation organized for the benefit of motorists. The following facts were found by the court:

- 1) The objects of the corporation could be attained only through a voluntary association such as it was and only through the lawyers employed by it;
- 2) The results achieved by the association and its legal department benefited not only its members but all motorists;
- 3) The association and its legal department had been approved by the local bar association and had received an exemption from the operation of the canons of ethics;
- 4) The association solicited membership and its members were entitled to request the services of an attorney; and
- 5) The members of the association were not permitted to choose their own attorneys.

The Illinois court found that the association was engaged in the illegal practice of law even though it was a nonprofit

organization and had rendered valuable service to its members and the community.

A corporation organized to permit united protection of certain taxpayers in matters of taxation and legislation was considered in the case of *People ex rel Courtney v. Association of Real Estate Taxpayers*, 4 Ill. 102, 187 N. E. 823. There, the Illinois court found the following facts:

- 1) Owners of real estate were invited to become members of the corporation and pay fees;
- 2) The corporation employed lawyers to represent it in all litigation concerning the validity of certain tax legislation;
- 3) The attorneys were selected and paid by the corporation; and
- 4) The corporation determined what questions were to be litigated.

The court found that the corporation was engaged in the illegal practice of law even though the lawsuits were brought in the name of individual members and fees in certain cases would have cost an individual approximately \$200,000.

The case of *Doughty v. Grills*, 37 Tenn. App. 63, 260 S. W. 2d 379 (1952), involved a situation where the defendant advised members of a railroad brotherhood of certain services furnished by its legal department. The defendant had advised a widow to go to the regional counsel for the brotherhood in order to obtain free legal advice though he insisted that he had advised her and other members of the brotherhood that the employment of the regional counsel was optional.

The defendant contended that he only referred members

of the brotherhood to its regional counsel for free advice. After the advice was given the regional counsel would then resume the private practice of law.

The court stated that the distinction mentioned above was too "fine cut". Such a story "could only be accepted as true by one extraordinarily naive and unrealistic."

An injunction was issued restraining the defendant and others from acting as "runners" and "solicitors" on the ground that they were assisting the brotherhood in the illegal practice of the law. For other examples of similar schemes see *Hildebrand v. State Bar of California*, 225 P. 2d 508 (1950); *Atchison, Topeka & Santa Fe Railway Co. v. Jackson*, 235 F. (2d) 390 (10th Cir., 1956); and *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N. E. 2d 163 (1958).

As to Section 54-74 of the Code of Virginia, a state has the right under its police power to establish standards for those who wish to practice law. *Schwartz v. Board of Bar Examiners*, 353 U. S. 232 (1957). Furthermore, a state may revoke or suspend the license of an attorney who is guilty of unprofessional conduct. *Richmond Ass'n. of Credit Men v. Bar Association*, *supra*, at pp. 334-336 and *Campbell v. Third District Committee*, 179 Va. 244, 249, 250, 18 S. E. (2d) 883, 885 (1942).

It is likewise clear that Section 54-78 of the Code of Virginia, which forbids laymen to solicit employment for licensed attorneys, is a valid police regulation. *McCloskey v. Tobin*, 252 U. S. 107 (1920).

The sections in question do not prevent the giving of assistance to negroes to vindicate their constitutional rights to be free from racial discrimination as alleged by the petitioner. They only prevent the solicitation of employment by licensed attorneys and the running and capping by laymen

or corporations. Clearly, the Fourteenth Amendment does not prohibit this type of legislation.

### CONCLUSION

For reasons stated above, it is respectfully submitted that the provisions of Sections 54-74 and 54-78, both prior to and subsequently to the enactment of Chapter 33, Acts of Assembly of Virginia, Extra Session, 1956, are constitutional in all respects. Accordingly, the decision of the Supreme Court of Appeals of Virginia should be affirmed.

Respectfully submitted,

DAVID J. MAYS

HENRY T. WICKHAM

*Counsel for Respondents*

TUCKER, MAYS, MOORE & REED  
1407 State-Planters Bank Bldg.  
Richmond, Virginia

October 20, 1961

**CERTIFICATE OF SERVICE**

In accordance with paragraph 1 of Rule 33 of this Court, I hereby certify that three copies of the foregoing brief has been mailed to Robert L. Carter, 20 West 40th Street, New York 18, New York, attorney for petitioner, by depositing the same in a United States post office, with first class postage prepaid, this 20th day of October, 1961.

HENRY T. WICKHAM



# APPENDIX I

Witness	Approximate Family Income	Real Estate Owned
James W. Harris (R. 96) 618 33rd St. Newport News, Va.	\$5,000 3,500 (w) <hr/> 8,500	\$ .....
Dr. E. C. Downing (R. 102, 100) 1229 27th St. Newport News, Va.	12-16,000.	30,800
Louis Thompson (R. 105, 106) 829 21st St. Newport News, Va.	5,000	15,000 (\$2, or \$3,000 liens)
David W. Morris (R. 108) 1818 Marshall Avenue. Newport News, Va.	.....	50,000 (\$20,- 000 in liens)
Thomas W. Selden (R. 112, 111) 3100 Madison Ave. Newport News, Va.	19,000	21,000
Marie E. Patterson (R. 116) 751 26th St. Newport News, Va.	13-17,000	.....
Jerry C. Fauntleroy (R. 117) 3303 Roanoke Ave. Newport News, Va.	8,100	.....
James E. Manson (R. 122, 123) 3808 Marshall Ave. Newport News, Va.	4-5,000	30,000
Arthur L. Price (R. 126, 127) 3012 Marshall Ave. Newport News, Va.	6,000	12,000
Barbara S. Marx (R. 136, 137) 6897 N. Washington Blvd. Arlington, Va.	4,000	30,000

Witness	Approximate Family Income	Real Estate Owned
E. Leslie Hamm (R. 139) 1900 N. Camden St. Arlington, Va.	5,000 3,000 (w)	18,000
	8,000	
Edward D. Strother (R. 141) 2819 S. 18th St. Arlington, Va.	8,000	.....
George L. Nelson (R. 141) 2005 N. Camden St. Arlington, Va.	5,000	.....
Audrey T. Newman (R. 144) 5554 Lee Highway Arlington, Va.	4,000 (h)	.....
Josie F. Pravad (R. 146) 2900 S. 20th St. Arlington, Va.	She and husband work for Federal Gov't. (She is a a GS-4)	.....
Ruth M. Rout (R. 150) 3011 17th Road Arlington, Va.	3,400 3,500 (h)	.....
	6,900	
Harry Strother (R. 152) 2102 N. Dinwiddie St. Arlington, Va.	3,800	.....
Dr. Harold M. Johnson (R. 210) 2901 Lexington St. Arlington, Va.	.....	87,650
Alex M. Davis (R. 155) 607 10½ St., N.W. Charlottesville, Va.	3,500	.....

Witness	Approximate Family Income	Real Estate Owned
Eugene Williams (R. 157) 620 Ridge St. Charlottesville, Va.	4,000	.....
Dr. M. T. Garrett (R. 161, 162) 320 W. Main St. Charlottesville, Va.	7,000 4,000 (w) <hr/> 11,000	50,000
George R. Ferguson (R. 164, 165) 702 Ridge St. Charlottesville, Va.	1,800 3,600 (w) <hr/> 5,400	.....
William M. Smith (R. 167) 1709 Preston Ave. Charlottesville, Va.	5,000	.....
J. Russell Arnett (R. 169) Route 5, Box 152 Charlottesville, Va.	6,000	.....

(h) Husband.

(w) Wife.

SUPRE-

Office-Supreme Court, U.S.  
**FILED**

NOV 4 1961

JOHN F. DAVIS, CLERK

IN THE

**Supreme Court of the United States**

October Term, 1961

No. 44

NATIONAL ASSOCIATION FOR THE ADVANCE-  
MENT OF COLORED PEOPLE, ETC.,  
*Petitioner,*

v.

FREDERICK T. GRAY, Attorney General of  
Virginia, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA

**REPLY BRIEF FOR PETITIONER**

ROBERT L. CARTER,  
20 West 40th Street,  
New York 18, New York,  
*Attorney for Petitioner.*

FRANK D. REEVES,  
MARIA L. MARCUS,  
*of Counsel.*

## TABLE OF CONTENTS

	PAGE
Reply Brief of Petitioner .....	1
Appendix A:	
Report and Complaint .....	1a
Order to Show Cause .....	4a
Bill of Particulars .....	5a
Order to Amend .....	8a
Amended Bill of Particulars .....	9a
Order to Strike .....	13a
Order to Non-Suit .....	15a
Appendix B:	
Report and Complaint .....	16a
Rule to Show Cause .....	24a

IN THE  
**Supreme Court of the United States**

October Term, 1961

No. 44

---

NATIONAL ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE, Etc.,

*Petitioner,*

v.

FREDERICK T. GRAY, Attorney General of Virginia, et al.

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS  
OF THE COMMONWEALTH OF VIRGINIA

---

**REPLY BRIEF FOR PETITIONER**

---

On page 16 of respondents' brief, it is alleged that "Furthermore, the 1956 amendment [to Section 54-74 of the Code of Virginia, 1950] does nothing more than codify the law as it existed prior to 1956." This contention was not presented to the court below, is not a part of the record on appeal and is demonstrably fallacious. Moreover, the last minute position respondents take in this regard is contradicted in the opinion below, which states that the purpose of the new law was "to *strengthen* the existing statutes to *further* control the evils of solicitation for the benefit of attorneys by a person who is not a party to the proceeding and in which he has no pecuniary right or liability" (emphasis added). See Petition for Writ of Certiorari, page 14a.

It is true that Section 54-74, prior to its amendment in 1956, forbade "improper solicitation of any legal or pro-



**Order to Show Cause**

Complaint of the Fourth District Committee of the Virginia State Bar, verified by affidavit, having been made to this Court and filed in the Clerk's Office on December 10, 1959, that S. W. Tucker, a licensed attorney at law practicing in this County has been guilty of unprofessional conduct, it is ordered that a rule now issue against S. W. Tucker to appear in the Court Room of this Court, in the Town of Emporia in the County of Greenville at 10 o'clock A. M. on December 29, 1959 and show cause, if any he can, before a court of three judges to be constituted as the law prescribes why his license to practice law should not be revoked or suspended.

It is further ordered that an attested copy of this order accompanied by the certificate of the Judge be forthwith forwarded to the Honorable John William Eggleston, Chief Justice of the Supreme Court of Appeals of Virginia.

It is further ordered that an attested copy of this order be served by the Sheriff of the County of Greenville forthwith upon S. W. Tucker.

Enter this:

/s/ CARLTON E. HOLLADAY,

*Judge.*

December 21, 1959.

## Bill of Particulars

Comes now the Fourth District Committee of the Virginia State Bar by the Commonwealth Attorney of Greenville County, Virginia and for its bill of particulars respectfully represents:

1. That the case is based on the report and complaint filed in the above styled action and upon the matters therein stated.

2. That the case is further based on the rule of the said Court issued December 21, 1959 against S. W. Tucker.

3. That the Fourth District Committee of the Virginia State Bar will rely on all matters set forth in the said report and rule.

4. That in addition the charge of disbarment, suspension, or other disciplinary action is based on the following:

On or about the 3rd day of January, 1950, you did appear before the Circuit Court of Greenville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther P. Brockwell, when you had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when you did not receive or expect to receive compensation for your services from said Jodie Bailey or any person connected with or a party to the said case.

5. That in addition the charge of disbarment, suspension or other disciplinary action is based on the following:

On or about the 1st day of November, 1950, you did appear before the Circuit Court of Isle of Wight County, Virginia and assist in the prosecution of one Whitley, who stood indicted for the rape of one Mary Collins, when your assistance had not been requested by the Common-

*Bill of Particulars*

12. That the conduct of S. W. Tucker constituted a violation of the following "Cannons of Personal Ethics", to-wit: Cannon 6, Cannon 27, Cannon 28, Cannon 29, Cannon 38, and Cannon 42.

13. That the conduct of S. W. Tucker in connection with the aforesaid cases constituted a violation of professional ethics against maintenance and barratry which is both a violation of the Common Law, and the unwritten rules of professional conduct as recognized in the "Cannons of Personal Ethics."

FOURTH DISTRICT COMMITTEE OF THE VIRGINIA  
STATE BAR

by .....  
Harold L. Townsend

discrimination in school facilities. It is natural that the public should expect the N.A.A.C.P. to provide assistance in such cases, since one of its main goals is to secure the rights of Negroes to fair and just treatment and vindication of declared constitutional rights in the courts.

As it was not clear what offense was being charged, a motion treated as a motion to strike the bill of particulars was made and granted, and the state was given time to file an amended bill of particulars (Appendix A, *infra*, at p. 8a). The amended bill charged respondent with stirring up strife and litigation, and volunteering advice (Appendix A, *infra*, at p. 9a). Clearly, these charges were giving *ex post facto* effect to Sections 54-74, 54-78 and 54-79 as they were amended by the General Assembly of Virginia in 1956.

In November 14, 1960, after the respondent had been under the shadow of these proceedings for nearly a year, the court held that the bill of particulars had improperly added new matter (Appendix A, *infra*, at p. 13a). The Commonwealth's Attorney requested a non-suit without prejudice, and this request was granted over the objections of respondent, who wished to bring the case to a final conclusion (Appendix A, *infra*; at p. 15a).

During the pendency of these proceedings, the Virginia Supreme Court of Appeals interpreted the instant statute. *N.A.A.C.P. v. Harrison*, 202 Va. 142, 116 S. E. 2d 55, decided September 2, 1960. On July 1, 1961, the Fourth District Committee of the Virginia State Bar caused a new Rule to Show Cause to issue against the respondent attorney. The present disbarment proceedings, now pending in the Circuit Court of Greensville County, are based on Tucker's participation in the three cases involved in the first disbarment proceedings, and involvement in a number of school desegregation cases and other litigation. The explicit charge of misconduct in these cases is that Tucker participated in them at the N.A.A.C.P.'s request. Thus, while in the first proceedings Sections 54-74, 54-78 and

54-79, as amended, were covertly given *ex post facto* effect, the instant complaint is explicit in that regard (Appendix B, *infra*, at p. 16a).

Clearly, the statutory provisions in question here give impetus to a continuing effort to prevent respondent and other attorneys from contributing their services to help Negroes in civil rights litigation. It has been of no avail in the courts of Virginia for respondent to assert that his participation in the cases in which misconduct is alleged was an example of outstanding public service rather than unethical conduct, and that he accepted the cases in question at the request of the party in interest or the family. Under this present statute the giving of such aid subjects him to harassment and potential disbarment, and he can be charged with unethical conduct simply because the N.A.A.C.P. underwrote the counsel fees, expenses and court costs required.

The *Tucker* case serves to illustrate only one of many fact patterns under which an attorney who could not be convicted under the pre-existing statute can be penalized under the 1956 amendments. Indeed, litigation involving property or economic rights would not have been so carefully excepted if the legislature had not been aware that the instant statute had a significant new reach.

Moreover, it is submitted that the legislation in question, pursuant to which severe restrictions are placed on litigation involving human rights, would never have been enacted but for a fear that N.A.A.C.P.-sponsored cases would further erode the state policy of enforced racial discrimination.

Respectfully submitted,

ROBERT L. CARTER,  
20 West 40th Street,  
New York 18, New York,  
*Attorney for Petitioner.*

MARIA L. MARCUS;  
FRANK D. REEVES,  
*of Counsel.*

## APPENDIX A

Disbarment proceedings against S. W. Tucker, an attorney at law. *First Proceedings* (initiated on August 4, 1959, and non-suited without prejudice on motion of the state on November 14, 1960).

### CIRCUIT COURT OF GREENSVILLE COUNTY

#### Report and Complaint

To the Honorable J. J. Temple, Judge of the said Court:

The undersigned, the 4th District Committee of the Virginia State Bar, created under the provisions of Rule 13 of the Rules for the Integration of the Virginia State Bar, adopted and promulgated by the Supreme Court of Appeals of Virginia on Oct. 21, 1938, respectfully reports:

1. That on the 4th day of August, 1959, it received a complaint of unprofessional conduct on the part of S. W. Tucker, a licensed Attorney at Law, practicing in the County of Greenville, Virginia;

2. That after making a preliminary investigation of the said complaint, it found that the same justified further investigation, and the committee thereupon caused the said complaint to be reduced to writing, a copy of which is hereto attached and filed herewith as Exhibit "A", and fixed upon October 21, 1959, at 10:00 a. m., as the time, and the Greenville County Court House, Emporia, Virginia, as the place, for a hearing to be thereon.

3. That the said S. W. Tucker was served with a copy of the written complaint and was given notice of the time and place of the said hearing more than ten days prior thereto as required by the said Rule;

4. That the said S. W. Tucker appeared in person, with Counsel at said time and place, however, the Court reporter



*Report and Complaint*

did not appear and by consent the hearing was continued to October 26, 1959, at the same time and place, said Tucker again appeared in person, was represented by Counsel, and waived the reading of the Complaint. Evidence, consisting of the testimony of witnesses, and of said Tucker, all of whom were cross-examined, as well as argument of Counsel for Mr. Tucker, was heard.

5. That the transcript of the said proceedings before the Fourth District Committee is hereto attached and filed herewith as Exhibit "B".

6. That at the conclusion of the said hearing, the Committee decided that a charge of disbarment, suspension, or other disciplinary action against the said S. W. Tucker is merited for the following reasons:

1. On or about the 3rd day of January, 1950, you did appear before the Circuit Court of Greensville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther P. Rockwell, when you had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when you did not receive or expect to receive compensation for your services from said Jodie Bailey or any person connected with or a party to the said case.

2. On or about the 1st day of November, 1950, you did appear before the Circuit Court of Isle of Wight County, Virginia, and assist in the prosecution of one Whitley, who stood indicted for the rape of one Mary Collins, when your assistance had not been requested by the Commonwealth's Attorney or any person connected with the said case and when you did not receive or expect to receive compensa-

*Report and Complaint*

tion for your services from any person connected with or a party to the said case.

3. On or about the 30th day of September, 1952, you did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of one Tabb Watts, who stood charged with a criminal offense, when you had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other counsel, and when you did not receive or expect to receive compensation for your services from said Tabb Watts or any person connected with or a party to the said case.

The above being the paragraphs numbered 1., 2. and 3. of the said written complaint (Exhibit A), the part of the said written complaint numbered as paragraphs 4. and 5. were withdrawn and dismissed by the Committee.

The Committee directed that a report of its proceedings with a verified complaint be filed in the Clerk's Office of your Honor's Court for further proceedings to be had thereon in accordance with the statutes in such cases made and provided, and that a copy thereof be filed with the Secretary of the Virginia State Bar, all as required by the said Rule.

The Chairman of the Committee was authorized to sign the complaint on behalf of the Fourth District Committee.

Respectfully submitted,

Fourth District Committee of  
the Virginia State Bar

By

Chairman

*Bill of Particulars*

walth's Attorney or any person connected with the said case and when you did not receive or expect to receive compensation for your services from any person connected with or a party to the said case.

6. That in addition the charge of disbarment, suspension or other disciplinary action is based on the following:

On or about the 30th day of September, 1952, you did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of one Tabb Watts, who stood charged with a criminal offense, when you had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other counsel, and when you did not receive or expect to receive compensation for your services from said Tabb Watts or any person connected with or a party to the said case.

7. That the conduct of S. W. Tucker in connection with the aforesaid cases is a violation of professional ethics and constituted unprofessional conduct as set forth in the "Rules for Integration of the Virginia State Bar", as adopted by the Supreme Court of Appeals of Virginia.

8. That the conduct of S. W. Tucker in connection with the said cases constituted solicitation.

9. That the conduct of S. W. Tucker in connection with the said cases constituted the representation of adverse and conflicting interests.

10. That the conduct of S. W. Tucker in connection with the said cases constituted advertising.

11. That the conduct of S. W. Tucker was a violation of Canon 35 of the Canons of Personal Ethics.

**Order**

(February 12, 1960)

This day came the respondent in person and by counsel and also came the Commonwealth's Attorney, and the respondent having heretofore filed a Motion to Dismiss the Rule to Show Cause for Want of Particularities in the Complaint and the Commonwealth's Attorney having filed a motion to quash the said motion of respondent, and the same were argued by counsel.

And it appearing to the Court that respondent's said motion is technically incorrect and that the proper motion is a Motion to Strike the Bill of Particulars, and the Court treating respondent's motion to dismiss as a Motion to Strike the Bill of Particulars heretofore filed.

It is, therefore, ORDERED that the Motion to Strike is granted and that the Commonwealth's Attorney shall file within twenty-one (21) days from this date an amended Bill of Particulars. It is further ORDERED that within twenty-one (21) days therefrom respondent shall file such responsive pleadings as he may be advised.

To this action of the Court, the Commonwealth's Attorney excepts.

/s/ J. G. JEFFERSON, JR., Judge

/s/ JERRY E. BRAY, JR., Judge

/s/ CARLTON E. HOLLADAY, Judge

## **Amended Bill of Particulars**

Comes now the Fourth District Committee of the Virginia State Bar by the Commonwealth Attorney of Greenville County, Virginia, pursuant to Court order in the above action, and for an amended bill of particulars respectfully represents:

1. That in addition to the matters herein set forth the complaint is based on the "Report and Complaint" filed in the above styled action by the Fourth District Committee of the Virginia State Bar, and upon the matters therein stated.

2. That in addition to the matters herein set forth the complaint is further based on the rule of the said Court issued December 21, 1959 against S. W. Tucker in the above styled action and upon the matters therein stated.

3. That in addition to the matters herein set forth the complaint is based on all matters set forth in the bill of particulars hereto filed in the above styled action.

4. That S. W. Tucker, an attorney, has conducted himself so as to violate the provisions of 54-74 of the 1950 Code of Virginia prohibiting "any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct".

5. That S. W. Tucker on or about the 3rd day of January, 1950, did appear before the Circuit Court of Greenville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther J. Brockwell, when he had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when

*Amended Bill of Particulars*

he did not receive or expect to receive compensation for his services from said Jodie Bailey or any person connected with or a party to the said case. That S. W. Tucker was employed in the above by reason of improper solicitation in violation of Cannon 27 of the Cannons of Personal Ethics.

6. That by personal communication and interviews not warranted by personal relations S. W. Tucker was employed in said case thus violating Cannon 27 of the Cannons of Personal Ethics.

7. That S. W. Tucker in volunteering advice and services in said case on behalf of Jodie Bailey engaged in advertisement of his services as an attorney contrary to Cannon 27 and Cannon 28 of the Cannons of Personal Ethics.

8. That S. W. Tucker was paid \$44. by Jodie Bailey and that S. W. Tucker accepted other compensation, commissions or other advantages from others including the NAACP without the knowledge and consent of his client after full disclosure in violation of Cannon 38 of the Cannons of Personal Ethics.

9. That S. W. Tucker in appearing in said case in Greenville County was controlled by a lay agency, to-wit, the NAACP, and that the provisions of Cannon 35 were thereby violated.

10. That S. W. Tucker on or about the 1st day of November, 1950, did appear before the Circuit Court of Isle of Wight County, Virginia, and assist in the prosecution of one Whitley, who stood indicted for the rape on one Mary Collins, when his assistance had not been requested



*Amended Bill of Particulars*

by the Commonwealth's Attorney or any person connected with the said case and when he did not receive or expect to receive compensation for his services from any person connected with or a party to the said case.

11. That S. W. Tucker in volunteering advice and services in said case on behalf of Mary Collins engaged in advertisement of his services as an attorney contrary to Cannon 27 and Cannon 28 of the Canons of Personal Ethics.

12. That S. W. Tucker in appearing in said case in Isle of Wight County was controlled by a lay agency, to-wit, the NAACP, and that the provisions of Cannon 35 were thereby violated.

13. That S. W. Tucker in appearing in the Mary Collins case violated Cannon 27 because of improper solicitation.

14. That by personal communication and interviews not warranted by personal relations S. W. Tucker appeared as Counsel in the Mary Collins case in violation of Canon 27.

15. That S. W. Tucker on or about the 30th day of September, 1952, did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of the Tabb Watts, who stood charged with a criminal offense, when he had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other counsel, and when he did not receive or expect to receive compensation for his services from said Tabb Watts or any person connected with or a party to the said case.

*Amended Bill of Particulars*

16. That S. W. Tucker was employed in the above by reason of improper solicitation in violation of Cannon 27 of the Cannons of Personal Ethics.

17. That by personal communication and interviews not warranted by personal relations S. W. Tucker was employed in said case thus violating Cannon 27 of the Cannons of Personal Ethics.

18. That S. W. Tucker in volunteering advice and services in said case on behalf of Tabb Watts engaged in advertisement of his services as an attorney contrary to Cannon 27 and Cannon 28 of the Cannons of Personal Ethics.

19. That S. W. Tucker in appearing in said case in Charlotte County was controlled by a lay agency, to-wit: the NAACP, and that the provisions of Cannon 35 were thereby violated.

20. That the details on said charges are substantially set forth in the Transcript dated October 26, 1959 before the Fourth District Committee of the Virginia State Bar, filed in this cause.

21. That S. W. Tucker has by his own personal admission at the request of the NAACP or a branch thereof represented numerous persons involved in litigation, to-wit: "Hanover County" Case, "the Martinsville Seven Case", "the Charlottesville School Case", "Commonwealth vs. Bailey", 2 cases "in Mecklenburg County", "Charlotte County" Case, "Lancaster County" Case, "Isle of Wight" Case, in violation of Cannon 35.

22. That the representation by S. W. Tucker in the said cases involved the volunteering of advice and the stirring up of strife and litigation in violation of Cannon 28.

*Order to Strike Portions of the Amended  
Bill of Particulars*

23. That the representation by S. W. Tucker in the said cases and the acceptance of proceeds from the NAACP without full knowledge and consent of his clients was a violation of Cannon 38.

FOURTH DISTRICT COMMITTEE OF THE  
VIRGINIA STATE BAR

by .....  
HAROLD L. TOWNSEND

**Order to Strike Portions of the Amended  
Bill of Particulars**

(November 14, 1960)

This matter came on this day to be heard on the complaint of the FOURTH DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR, against S. W. Tucker, an Attorney at Law practicing before the bar of this court; upon the rule to show cause issued on the 21st day of December, 1959; upon the amended bill of particulars filed herein on March 2nd, 1960; upon the answer of S. W. Tucker to the rule to show cause; and upon his motion embodied in said answer to dismiss the bill of particulars.

Upon consideration whereof it appearing that this proceeding was instituted pursuant to and under the provisions of Rule 13 for the Integration of the Bar of Virginia; that the Fourth District Committee of the Virginia State Bar after having received a complaint of unprofessional conduct on the part of S. W. Tucker, a member of the Virginia State Bar, made a preliminary investigation from which it was found by said committee that the complaint justified further investigation; that thereupon said committee caused the complaint to be reduced to writing, and a hearing had thereon, after notice to the said S. W. Tucker, who appeared in person and by counsel; that a decision having

*Order to Strike Portions of the Amended  
Bill of Particulars*

been made by such committee that a charge of disbarment, suspension or other disciplinary action was merited the said committee filed its report and a verified complaint in the Clerk's Office of this court in accordance with the provisions of the aforesaid Rule 13: whereupon these proceedings are now being had pursuant to and in accordance with the provisions of Section 54-74 of the Code of Virginia, the court is of opinion that the amended bill of particulars introduces new matter and enlarges upon the charges contained in the verified complaint in several particulars, and these proceedings having been instituted by the Fourth District Committee of the Virginia State Bar pursuant to said Rule 13, as aforesaid, the court is of the further opinion that the verified complaint cannot be enlarged upon by a bill of particulars and that new matter cannot thereby be introduced in these proceedings, and the court doth so decide and determine.

It is accordingly adjudged and ordered that paragraphs 3, 8, 9, 12, 19, 21, 22 and 23 of the amended bill of particulars be and they are hereby stricken without prejudice.

To which action of the Court, the said Bar Committee by counsel excepted.

Enter this:

/s/ J. G. JEFFERSON, JR., Judge

/s/ JERRY E. BRAY, JR., Judge

/s/ CARLTON E. HOLLADAY, Judge

**Order to Non-Suit the Proceedings**

(November 14, 1960)

This matter came on this day to be heard on the motions of S. W. Tucker, an attorney at law, to strike the amended bill of particulars heretofore filed on March 2, 1960, and for leave to amended instanter the answer of the said S. W. Tucker by striking specified portions thereof.

Upon consideration and the Court being fully advised in the premises,

It is accordingly ADJUDGED and ORDERED that:

1. Respondent's motion to strike the amended bill of particulars be and it is hereby DENIED, to which action of the Court respondent excepts.

2. Respondent's motion to amend his answer be and it is hereby allowed to the extent specified in said motion.

Thereupon, the Commonwealth's Attorney moved for a continuance based on the ruling of the Court in striking a portion of the bill of particulars which motion for a continuance was DENIED, to which action of the Court the Commonwealth's Attorney excepted.

Thereupon the Commonwealth's Attorney moved that the proceedings be non suited without prejudice, whereupon it is ORDERED and DECREED that the proceedings be non suited without prejudice, to which action of the Court the respondent, by counsel, excepted.

J. G. JEFFERSON, JR.  
*Judge*

JERRY E. BRAY, JR.  
*Judge*

CARLTON E. HOLLADAY  
*Judge*

**APPENDIX B**

Disbarment proceedings against S. W. Tucker. *Second Proceedings* (initiated on July 1, 1961).

**CIRCUIT COURT OF GREENSVILLE COUNTY****Report and Complaint**

To the Honorable Judge of said Court:

The undersigned, the 4th District Committee of the Virginia State Bar, created under the provisions of Rule 13 of the Rules for the Integration of the Virginia State Bar, adopted and promulgated by the Supreme Court of Appeals of Virginia on October 21, 1938, respectfully reports:

1. That on the 14th day of November, 1960, it received a complaint of unprofessional conduct on the part of S. W. Tucker, a licensed Attorney at Law, practicing in the County of Greenville, Virginia;

2. That after making a preliminary investigation of the said complaint, it found that the same justified further investigation, and the committee thereupon caused the said complaint to be reduced to writing, a copy of which is hereto attached and filed herewith as Exhibit "A", and fixed upon April 5, 1961, at 10:00 A. M., as the time, and the Greenville County Court House, Emporia, Virginia, as the place, for a hearing to be thereon.

3. That the said S. W. Tucker was served with a copy of the written complaint and was given notice of the time and place of the said hearing more than ten days prior thereto as required by the said Rule;

4. That the said S. W. Tucker, by Counsel, moved for a continuance of the time of said hearing from April 5, 1961 until April 25, 1961 at 2:00 P. M., to which continuance the 4th District Committee consented.



*Report and Complaint*

5. That on the 25th day of April, 1961 the said S. W. Tucker appeared in person, and by Counsel, and waived the reading of the complaint. Evidence, consisting of the testimony of witnesses, and of said Tucker, all of whom were cross-examined, as well as argument of Counsel for Mr. Tucker, was heard.

6. That the transcript of the said proceedings before the Fourth District Committee is hereto attached and filed herewith as Exhibit "B".

7. That at the conclusion of said hearing, the Committee decided that a charge of disbarment, suspension, or other disciplinary action against the said S. W. Tucker is merited for the following reasons:

1. That S. W. Tucker on the 17th day of May, 1960, qualified as administrator of the estate of Fannie Perkins at the instance of certain heirs of the deceased husband of Fannie Perkins, it being represented that there were no direct heirs of Fannie Perkins. Thereafter one John Phillips, claiming to be a direct heir of Fannie Perkins, deceased, retained H. Benjamin Vincent to represent him for the purpose of having the administration of S. W. Tucker revoked. H. B. Vincent filed certain pleadings and motions in behalf of John Phillips and copies were received by S. W. Tucker. In other words, S. W. Tucker had notice that H. B. Vincent was counsel of record for John Phillips in the matter concerning the estate of Fannie Perkins, deceased, and more particularly that H. B. Vincent represented John Phillips in the matter of the removal of S. W. Tucker as administrator of the estate.

Despite this, S. W. Tucker permitted John Phillips to be brought to his office by John Knox, who had an interest as a creditor of the estate and who is a regular client of S. W. Tucker's and S. W. Tucker discussed with John

*Report and Complaint*

Phillips the various matters concerning the estate which were in issue. Moreover, S. W. Tucker obtained from John Phillips a sworn statement which stated, among other things, that John Phillips had no objection to S. W. Tucker's continuation in office as administrator.

S. W. Tucker stated that he made no effort to contact H. B. Vincent prior to talking to John Phillips, that he did not caution John Phillips that he should contact H. B. Vincent prior to discussing the matter with S. W. Tucker, that he made no effort to have H. B. Vincent present at the conference and that he was well aware that H. B. Vincent was counsel for John Phillips.

That the conduct aforesaid constituted a violation of Canon 9 in that S. W. Tucker communicated and negotiated with a party represented by Counsel.

That the conduct aforesaid constituted a violation of Canon 6 in the representation and attempt to represent conflicting and adverse interests.

That the conduct aforesaid constituted a violation of Canon 27 in that it was direct advertising and solicitation.

2. That S. W. Tucker has over a period of time violated the Canons of Ethics as follows:

(a) That S. W. Tucker on or about the 3rd day of January, 1950, did appear before the Circuit Court of Greensville County, Virginia, and undertake the defense of one Jodie Bailey, who stood indicted for the murder of one Luther P. Brockwell, when he had not been employed or retained for such purpose by the said Jodie Bailey or any person connected with or a party to the said case and when he did not receive or expect to receive compensation for his services from said Jodie Bailey or any person connected with or a party to the said case. That S. W. Tucker was employed in the above by reason of improper solicitation in violation of Canon 27 of the Canons of Personal or Professional Ethics.

*Report and Complaint*

(b) That S. W. Tucker on or about the 1st day of November, 1950, did appear before the Circuit Court of Isle of Wight County, Virginia, and assist in the prosecution of one Whitley, who stood indicted for the rape of Mary Collins, when his assistance had not been requested by the Commonwealth's Attorney or any person connected with the said case and when he did not receive or expect to receive compensation for his services from any person connected with or a party to the said case.

(c) That S. W. Tucker on or about the 30th day of September, 1952, did appear before the Circuit Court of Charlotte County, Virginia, and undertake the defense of one Tabb Watts, who stood charged with a criminal offense, when he had not been employed or retained for such purpose by the said Tabb Watts or any person connected with or a party to the said case, the said Tabb Watts having previously employed other Counsel, and when he did not receive or expect to receive compensation for his services from said Tabb Watts or any person connected with or a party to the said case.

(d) That S. W. Tucker in appearing in said cases in Greensville County, in Isle of Wight County, and Charlotte County, was controlled by a lay agency, to-wit, the NAACP, a branch thereof, or by a related organization, and that the provisions of Canon 35 and Canon 47 were thereby violated.

(e) That S. W. Tucker in appearing in aforesaid cases in Paragraphs (a), (b) and (c) violated Canon 27 because of improper solicitation.

(f) That S. W. Tucker in volunteering advice and services in said case on behalf of Jodie Bailey, Mary Collins and Tabb Watts cases engaged in advertisement of his services as an attorney contrary to Canon 27 and Canon 28 of the Canons of Personal or Professional Ethics.

*Report and Complaint*

(g) That by personal communications and interviews not warranted by personal relations S. W. Tucker appeared as Counsel in the said cases cited in paragraphs (a), (b) and (c) in violation of Canon 27 of the Canons of Personal or Professional Ethics.

(h) That S. W. Tucker was paid \$44. by Jodie Bailey and that S. W. Tucker accepted other compensation, commissions or other advantages from others including the NAACP without the knowledge and consent of his client after full disclosure in violation of Canon 38 of the Canons of Personal or Professional Ethics.

3. (a) That S. W. Tucker has by his own personal admission at the request of the NAACP or a branch thereof represented numerous persons involved in litigation, to-wit: "Hanover County Case", "the Martinsville Seven Case", "the Charlottesville School Case", 2 cases "in Mecklenburg County", Lancaster County Case", in addition to the "Cases" previously cited in Item 2, in violation of Canon 35.

(b) That S. W. Tucker has been associated as Counsel in the "Arlington County School Board Case", the "Richmond City School Board Case", "Prince Edward County School Board Case", and the "Warren County School Board Case", at the request of the NAACP or a branch thereof or a related organization, or a representative, agent, officer, or employee thereof.

(c) That the representation by S. W. Tucker in the said cases involved the volunteering of advice and the stirring up of strife and litigation in violation of Canon 28.

(d) That the representation by S. W. Tucker in the said cases and the acceptance of proceeds from the NAACP or a branch or a related organization without full knowledge and consent of his clients was a violation of Canon 38.

*Report and Complaint*

(e) That S. W. Tucker, an Attorney, accepted employment in the said cases at the request of the NAACP or a branch thereof or a related organization, which cases were solicited by the NAACP, in violation of Canon 35 and Canon 47 of Canons of Professional Ethics.

4. That in the cases of Commonwealth vs. Junius Cain, S. W. Tucker accepted employment to represent Junius Cain.

That in a related case of Commonwealth vs. Tom Garris, Boyce Wornom accepted employment to represent Tom Garris.

The warrants were sworn out by Jesse Phillips, age 21, and the cases tried in the Greenville County Court.

In the County Court, the Court ruled that it was immaterial and therefore not admissible in evidence as the name of a girl who was with Jesse Phillips as no evidence was offered relating to her.

On conviction in County Court, the cases were appealed.

Without notice to the Commonwealth Attorney of Greenville County, who had appeared as prosecutor in County Court, the prosecuting witness at the request of S. W. Tucker was issued a summons to appear before Boyce C. Wornom as Commissioner in Chancery for interrogatories at the request of S. W. Tucker as Attorney and before S. W. Tucker as Commissioner in Chancery to answer the interrogatories of Boyce C. Wornom at the request of Boyce C. Wornom, an attorney, at the offices of Boyce C. Wornom and the summons in each case were returnable at the same time and place alleging that the procedure was based on the 1950 Code of Va. Section 8-296, which procedure was contrary to powers granted in 8-252, without legal precedent and in violation of legal process.

The prosecuting witness having failed to appear on advice of the Commonwealth Attorney was served with a

*Report and Complaint*

"show cause" order issued in Circuit Court of Greenville County at the request of S. W. Tucker as attorney.

That the conduct of S. W. Tucker in instituting legal proceedings without legal foundation or basis and in pursuing a procedure which would be "calculated to . . . affect his (the witness) free and untrammelled conduct when appearing at the trial or on the witness stand", was a violation of Canon 22 and Canon 39 and Canon 15.

That such was an abuse of legal process by an attorney in violation of Canon 39.

5. (a) That the conduct of S. W. Tucker in connection with the aforesaid case is a violation of professional ethics and constituted unprofessional conduct as set forth in the "Rules for Integration of the Virginia State Bar", as adopted by the Supreme Court of Appeals of Virginia.

(b) That the conduct of S. W. Tucker in connection with the said cases constituted solicitation.

(c) That the conduct of S. W. Tucker in connection with the said cases constituted the representation of adverse and conflicting interests.

(d) That the conduct of S. W. Tucker in connection with the said cases constituted advertising.

(e) That the conduct of S. W. Tucker as an attorney in the aforesaid cases was a violation of Canon 35 of the Canons of Personal or Professional Ethics.

(f) That the conduct of S. W. Tucker constituted a violation of the following "Canons of Personal or Professional Ethics", to-wit: Canon 6, Canon 9, Canon 15, Canon 25, Canon 27, Canon 28, Canon 38, Canon 39, Canon 42, and Canon 47.

(g) That the conduct of S. W. Tucker in connection with the aforesaid cases constituted a violation of profes-



*Report and Complaint*

sional ethics against maintenance and barratry which is both a violation of the Common Law, and the unwritten rules of professional conduct as recognized in the "Canons of Personal or Professional Ethics".

The Committee directed that a report of its proceedings with a verified complaint be filed in the Clerk's Office of your Honor's Court for further proceedings to be had thereon in accordance with the statutes in such cases made and provided, and that a copy thereof be filed with the Secretary of the Virginia State Bar, all as required by said Rule.

The Chairman of the Committee was authorized to sign the complaint on behalf of the Fourth District Committee.

Respectfully submitted,

FOURTH DISTRICT COMMITTEE OF  
THE VIRGINIA STATE BAR

/s/ LIGON L. JONES

By: Ligon L. Jones  
Chairman

### **Rule to Show Cause**

Complaint of the Fourth District Committee of the Virginia State Bar, verified by affidavit, having been made to this Court and filed in the Clerk's Office on May 30th, 1961, that S. W. Tucker, a licensed attorney at law practicing in this County has been guilty of unprofessional conduct, it is ordered that a rule now issue against S. W. Tucker to appear in the Court Room of this Court, in the Town of Emporia in the County of Greenville at 10 o'clock A. M., on October 3rd, 1961, and show cause, if any he can, before a court of three judges to be constituted as the law prescribes, why his license to practice law should not be revoked or suspended.

It is further ordered that an attested copy of this order accompanied by the certificate of the Judge be forthwith forwarded to the Honorable John William Eggleston, Chief Justice of the Supreme Court of Appeals of Virginia.

It is further ordered that an attested copy of this order be served by the Sheriff of the County of Greenville forthwith upon S. W. Tucker.

Entered July 1st, 1961.

A Copy, Teste:

M. A. TAYLOR, JR.,  
Clerk.